This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.

+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.

+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.

+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`

3 2044 004 494 688

US 4668.15B

HARVARD
COLLEGE
LIBRARY

THE COLLECTOR'S FEDERAL EDITION OF THE WORKS OF ALEXANDER HAMILTON IS LIMITED TO SIX HUNDRED SIGNED AND NUMBERED SETS OF WHICH THIS IS NUMBER 233

G. P. Putnam's Sons

George Washington

From the painting by Rembrandt Peale

Reproduced by permission of C. Klackner, N. Y. Copyright, 1874

The

Works of

Alexander Hamilton

in

Twelve Volumes

Federal Edition

The Works of
Alexander Hamilton

Edited by

Henry Cabot Lodge

"The sacred rights of mankind are not to be rummaged for among old parchments or musty records. They are written, as with a sunbeam, in the whole volume of human nature, by the hand of the Divinity itself, and can never be erased or obscured by mortal power."
[HAMILTON—*The Farmer Refuted*, 1775, Æt. 18.]

"We are laboring hard to establish in this country principles more and more *national*, and free from all foreign ingredients, so that we may be neither 'Greeks nor Trojans,' but truly Americans."—[HAMILTON TO KING, 1796, Æt. 39.]

Volume VIII

G. P. Putnam's Sons
New York and London
The Knickerbocker Press
1904

U.S. 4[illegible] 15, 6

HARVARD
UNIVERSITY
LIBRARY

The Knickerbocker Press, New York

CONTENTS

PAGE

MISCELLANEOUS PAPERS:

CINCINNATI 3

SPEECHES IN THE NEW YORK ASSEMBLY, 1787 . 5

SPEECH ON ACCEDING TO THE INDEPENDENCE OF VERMONT 42

EULOGIUM ON MAJOR-GENERAL GREENE . . 63

PRESIDENTIAL ETIQUETTE:

HAMILTON TO WASHINGTON 83

WASHINGTON TO HAMILTON 87

PUBLIC LANDS:

REPORT OF A UNIFORM SYSTEM FOR THE DISPOSITION OF THE LANDS, THE PROPERTY OF THE UNITED STATES 87

HEADS OF TOPICS FOR PRESIDENT'S SPEECH OF DECEMBER 8, 1790 94

APPORTIONMENT OF REPRESENTATIVES:—HAMILTON TO WASHINGTON 95

INDIAN AFFAIRS 100

PRESIDENT'S SPEECH 102

INDIAN AFFAIRS 109

CONVENING CONGRESS:—HAMILTON TO WASHINGTON 110

OBJECTS TO BE COMMUNICATED IN SPEECH AND MESSAGES 115

PRESIDENT'S SPEECH 116

PRESIDENT'S MESSAGE 119

PROCLAMATION FOR A NATIONAL THANKSGIVING. 120

PAGE

MISCELLANEOUS PAPERS—*Continued:*

EXPLANATION 122
WASHINGTON'S SPEECH TO CONGRESS . . 153
MESSAGE FOR WASHINGTON TO CONGRESS IN REPLY TO A CALL FOR PAPERS RELATING TO THE TREATY WITH GREAT BRITAIN . 161
FAREWELL ADDRESS 181
WASHINGTON'S FAREWELL ADDRESS . . . 187
PART OF WASHINGTON'S SPEECH TO CONGRESS . 214
ADDRESS TO THE ELECTORS OF THE STATE OF NEW YORK 223
EXAMINATION OF JEFFERSON'S MESSAGE TO CONGRESS OF DECEMBER 7, 1801 . . 246
LANSING OR BURR 373
LAW BRIEFS 376
CARRIAGE TAX 378
THE LAW OF LIBEL 383
SPEECH IN THE CASE OF HARRY CROSWELL . 387
FRAGMENT ON THE FRENCH REVOLUTION . . 425
DEFENCE OF THE FUNDING SYSTEM . . . 429

MISCELLANEOUS PAPERS

MISCELLANEOUS PAPERS

CINCINNATI [1]

NEW YORK, July 6, 1786.

THE committee to whom was referred the proceedings of the Society of the Cincinnati, at their last general meeting, beg leave to report, that they have attentively considered the alterations proposed at the meeting to be made in the original Constitution of that Society; and, though they highly approve the motives which dictated those alterations, they are of opinion it would be inexpedient to adopt them, and this chiefly on the two following accounts:

"First.—Because the institution, as proposed to be altered, would contain in itself no certain provision for the continuance of the Society, beyond the lives of the present members; this point being left to the regulation of charters, which may never be

[1] The Society of the Cincinnati, founded in 1783, by the Revolutionary officers, excited a great deal of foolish hostility on account of what were considered its perilous aristocratic military and hereditary features. Prejudice was so strong that modifications were considered necessary, and were finally made in accordance with the advice of Washington, President of the Society. The main alterations were made in 1784, at the first general meeting, but the question continued to be mooted for some years, and was kept active by the formation of the State Societies, and it was 'n this connection that the above report was written.

obtained, and which, in the opinion of this committee, so far as affects this object, ought never to be granted, since the dangers apprehended from the institution could then only cease to be *imaginary*, when it should receive the sanction of a *legal* establishment. The utmost the Society ought to wish or ask from the several legislatures is, to enable it to appoint trustees to hold its property, for the charitable purposes to which it is destined."

"Second.—Because by a fundamental article it obliges the Society of each State to lend its funds to the State; a provision which would be improper, for two reasons: one, that in many cases the Society might be able to dispose of its funds to a much greater advantage; the other, that the State might not always choose to borrow from the Society."

But while the committee entertained this opinion with respect to the proposed alterations, they are, at the same time, equally of opinion, that some alterations in the original Constitution will be proper, as well in deference to the sense of many of our fellow citizens, as in conformity to the true spirit of the institution itself. The alterations they have in view respect principally the duration or succession of the Society, and the distinction between honorary and regular members. As to the first, the provision intended to be made appears to them to be expressed in terms not sufficiently explicit; and, as far as it may intend an *hereditary succession* by right of primogeniture, is liable to this objection—*that it refers to birth what ought to belong to merit only*; a principle inconsistent with the genius

of the Society founded on friendship and patriotism. As to the second, the distinction holds up an odious difference between men who have served their country in one way, and those who have served it in another, and improper in a Society where the character of patriot ought to be an equal title to all its members.

The committee, however, decline proposing any specific substitute for the parts of the original constitution which appear to them exceptionable; as they are of opinion any alterations necessary to be made can only be digested in a general meeting of the Society, specially authorized to agree upon and finally establish those alterations. With a view to this, they beg leave to recommend that a circular-letter be written from the Society to the different State Societies, suggesting the expediency of instructing and empowering their delegates at the next general meeting, to concur in such alterations as may appear to that meeting proper, after a full communication of what shall be found to be the sense of the several Societies.

SPEECHES IN THE NEW YORK ASSEMBLY, 1787 [1]

JANUARY 19TH.—SPEECH ON THE ANSWER OF THE HOUSE TO GOVERNOR CLINTON'S MESSAGE [2]

This now leads us to examine the important question presented to us by the proposed amendment.

[1] These Speeches, with the exception of that on the Independence of Vermont, are now included for the first time in Hamilton's Works. They are taken from the contemporary newspaper report.

[2] Congress had asked for an extra session of the Legislature, to

For my own part, I have seen with regret the progress of this business, and it was my earnest wish to have avoided the present discussion. I saw with regret the first application of Congress to the Governor, because it was easy to perceive that it involved a delicate dilemma: Either the Governor, from consideration of inconvenience, might refuse to call the Assembly, which would derogate from the respect due to Congress; or he might call them, and, by being brought together at an unreasonable period before the time appointed by law for the purpose, they would meet with reluctance and perhaps with a disposition less favorable than might be wished to the views of Congress themselves.

I saw, with equal regret, the next step of the business. If a conference had been desired with Congress, it might have been had—circumstances might have been explained; reasons might have been assigned satisfactory to them for not calling the Legislature, and the affair might have been compromised. But instead of this, the Governor thought fit to answer by a flat denial, founded on a constitutional amendment, and the idea of an invasion of the right of free deliberation was brought into view. I earnestly wished the matter to have rested here. I might appeal to gentlemen in the House—and particularly to the honorable gentleman who is so zealous in support of the amendment—that, before the

reconsider their action as to granting revenue, and Governor Clinton had refused to call an extra session as requested. This was the point involved in the debate on the answer of the House to the Governor's message, which drew with it approval or censure of the Governor's course.

speech appeared, I discovered a solicitude that, by passing the subject over in silence, it might give occasion to the present discussion.

* * * * * *

The question by the honorable member on my right has been wrongly stated. He says it is this: whether a request of Congress to convene the Legislature is *conclusive* upon the Governor of the State? or whether a bare intimation of that honorable body lays him under a constitutional necessity of convening the Legislature? But this is not the true question. From the shape in which the business comes before us, the inquiry truly is: whether a solemn application of the United States to the Executive of the State to convene the Legislature for the purpose of deliberating on a matter which is considered by that body as of essential importance to the Union, and which has been viewed in a similar light by most of the other States individually, is such an extraordinary occasion as left the Governor under no constitutional impediment to a compliance? And, it may be added, whether that application, under all the circumstances, was an attempt to invade the freedom of deliberation in this House?

Here let us ask, what does the Constitution say upon the subject? Simply this, that the governor "shall have power to convene the Assembly and Senate on extraordinary occasions." But what is an extraordinary occasion? What circumstances are to concur, what ingredients combine, to constitute one? What general rule can be imagined by which to define the precise meaning of these vague

terms, and draw the line between an ordinary and an extraordinary occasion? Will the gentleman on my right (that is, the ever-ready-to-jump-up-in-a-Jack-in-the-box-fashion-to-say-it-is-n't-when-A.-H.-says-it-is Mr. Jones) furnish us with such a criterion? Profoundly skilled as he is in law (at least the local laws of the State), I fancy it will be difficult for him to invent one that will suit his present purpose. Let him consult his law books, they will not relieve his embarrassment. It is easy to see that the clause allows the greatest latitude to opinion. What one may think a very extraordinary occasion, another may think a very ordinary one, according to his bias, his interest, or his intellect.

If there is any rule at all, it is this: the governor shall not call the Legislature with a view to the ordinary details of the State administration. Whatever does not fall within this description, and has any pretensions to national importance in any view, leaves him at liberty to exercise the discretion vested in him by the Constitution. There is at least no constitutional bar in the way. The United States are entrusted with the management of the general concerns and interests of the community; they have the power of war and peace; they have the power of treaty.

Our affairs with respect to foreign nations are left to their direction. We must entertain very diminutive ideas of the Government of the Union, to conceive that their earnest call on a subject which they deem of great national magnitude, which affects their engagements with two respectable foreign pow-

ers, France and the United Netherlands, which relates to the preservation of their faith at home and abroad, is not such an occasion as would justify the Executive, upon the terms of the Constitution, in convening the Legislature. If this doctrine is maintained, where will it lead to? what kind of emergency must exist before the Constitution will authorize the Governor to call the Legislature? Is the preservation of our national faith a matter of such trivial moment? Is the fulfilment of the public engagements, domestic and foreign, of no moment? Must we wait for the fleets of the United Netherlands or of France to enforce the observance of them, before the Executive will be at liberty to give the Legislature an opportunity of deliberating on the means of their just demand? This is straining the indefinite words of the Legislature to a most unreasonable extreme. It would be a tenable position to say that the call of the United States is alone sufficient to satisfy the idea of an extraordinary occasion. It is easy to conceive that such a posture of European affairs might exist as would render it necessary to convene the different Legislatures to adopt measures for the public safety, and at the same time inexpedient to disclose the object till they were assembled. Will we say that Congress would be bound to communicate the object of their call to the Executive of every State; or that the Executive of this State, in complying with their request, would be guilty of a violation of the Constitution? But the present case is not that of a mere general request; it is specifically to deliberate upon an object of acknowledged importance in one

view or another. On one hand it is alleged to be essential to the honor, interest, and perhaps the existence of the Union; on the other, it is said to be on principles subversive of the Constitution and dangerous to the liberty of the subject. It is therefore a matter of delicacy and moment. And the urgent call of the Union to have it considered, cannot fall within the notion of so common and so ordinary an occasion as would prohibit the Executive from summoning a meeting of the Legislature.

The only argument urged to denominate it such, is that it had been recently determined upon by the Legislature. But there is an evident fallacy in this position. The call was addressed to a new and different body, *really different* in the contemplation of the Constitution, and *materially* different in fact with respect to the members who compose it. A large proportion of the members of the present House were not the members of the last. For aught that either Congress or the Governor could officially know, there might have been a total change in the individuals, and, therefore, a total difference in the sentiments. No inference, of course, could be fairly drawn from the conduct of the last Legislature to that of the present. Indeed, however it might be wished to prepossess the members of the former House with a contrary idea, it is plain that there is no necessary connection between what they did at that time and what it may be proper for them to do now. The act of the last session proves the conviction of the House then, that the grant of the impost was an eligible measure. Many members

were led to suppose that it would answer the purpose, and might have been accepted by Congress. If the experiment has shown that they were mistaken in their expectations, and if it should appear to them that Congress could not for good reasons accept it, the same motives which induced them to the grant already made, would determine them to consent to such alterations as would accommodate it to the views of Congress and the other States, and make it practicable to carry the system into execution.

It may be observed that as Congress accompanied their request with an explanation of the object, they, by that mode of procedure, submitted the whole matter to the discretion of the Governor, to act according to the estimate formed in his own mind as to its importance.

It is not denied that the Governor had a discretion upon the occasion. It is not contended that he was under a constitutional necessity to convene the Legislature. The resolution of Congress itself does not imply or intimate this. They do not pretend to require, they only earnestly recommend. The Governor might at his peril refuse, responsible, however, for any ill consequences that might have attended his refusal. But the thing contended for is this: that the call of the United States, under the circumstances, was sufficient to satisfy the terms of the Constitution empowering him to convene the Legislature on extraordinary occasions; and left him at full liberty to comply.

The admission of his discretion does not admit that it was properly exercised, nor does it admit that

the footing upon which he placed his refusal was proper. It does not admit that the Constitution interposed an obstacle in his way, or that the request of Congress implied any thing hostile to the right of free deliberation.

This is the aspect under which the business presents itself to our consideration, as well from the correspondence between Congress and the Governor, as from the manner in which it is ushered to us in the speech. A general approbation of his conduct is an approbation of the principle by which it is professed to have been actuated.

Are we ready to say that the Constitution would have been violated by a compliance? Are we ready to say that the call upon us to deliberate is an attempt to infringe the freedom of deliberation? If we are not ready to say both, we must reject the amendment.

In particular, I think it must strike us all that there is something singularly forced in intimating that the application of Congress to the Governor of the State to convene a new Legislature to consider a very important national subject, has any thing in it dangerous to the freedom of our deliberations.

I flatter myself we should all have felt ourselves as much at liberty to have pursued our sentiments if we had met upon an extraordinary call, as we do now when met according to our own appointments. There yet remains an important light in which the subject merits consideration. I mean as it respects the authority of the State itself: By deciding that the application of Congress, upon which the debate turns, was not such an extraordinary occasion as left the

Governor at liberty to call the Legislature, we may form a precedent of a very dangerous tendency; we may impose a sense on the Constitution very different from the true meaning of it, and may fetter the present or a future executive with very inconvenient restraints. A few more such proceedings may tie up the hands of the Governor in such a manner as would either oblige him to act at an extreme peril, or to omit acting when public exigencies required it. The mere sense of one governor would be no precedent for his successor; but that sense, approved by both Houses of the Legislature, would become a rule of conduct. Suppose a few more precedents of the kind, on different combinations of circumstances equally strong, and let us ask ourselves: What would be the situation of the Governor whenever he came to deliberate on the propriety of exercising the discretion in this respect vested in him by the Constitution? Would he not be apt to act with a degree of caution, or, rather, timidity, which, in certain emergencies, might be productive of very pernicious consequences? A mere intimation of the Constitution to him not to call the Legislature in their recess upon every *trifling affair*, which is its true import, would be turned into an injunction not to do it but upon occasions of the *last necessity*.

We see, therefore, that the question upon which we are called to decide is not less delicate as it respects the Constitution of the State itself, than as it respects the Union; and that, in every possible view, it is most prudent to avoid the determination. Let the conduct of the Governor stand on its own merits.

If he was right, our approbation will not make him more right; if he was wrong, it would be improper to sanction his error.

Several things have been said in the debate which have no connection with it; but to prevent their making improper impressions, it may not be amiss to take some notice of them. The danger of a power in Congress to compel the convening of the Legislature at their pleasure has been strongly insisted upon. It has been urged that, if they possessed it, they might make it an engine to fatigue the Legislature into a compliance with their measures. Instances of an abuse of a like power in the Crown under the former government have been cited.

It is a sufficient answer to all this to say that no such power has been contended for. I do not assert that their request obliged the Governor to convene the Legislature. I only maintain that their request on an important national subject was such an occasion as left him free to do it without any color for imputing to him a breach of the Constitution; and that, from motives of respect to the Union, and to avoid any further degradation of its authority, already at too low an ebb, he ought to have complied. Admitting, in the fullest extent, that it would be dangerous to allow to Congress the power of requiring the Legislature to be convened at pleasure, yet no injury nor inconvenience can result from supposing the call of the United States upon a matter by them deemed of importance to be an occasion sufficiently extraordinary to *authorize* not to *oblige* the governor to comply with it.

I cannot forbear remarking that it is a common artifice to endeavor to insinuate a resemblance between the king under the former government and Congress, although no two things could be more unlike each other. Nothing can be more dissimilar than a monarch, permanent, hereditary, the source of honor and emolument; and a republican body, composed of individuals appointed annually, liable to be recalled within the year, and subject to a continual rotation, which, with few exceptions, is the fountain neither of honor nor emolument. If we will exercise our judgments, we shall plainly see that no such resemblance exists, and that all inferences deducted from the comparison must be false.

Upon every occasion, however foreign such observations may be, we hear a loud cry raised about the danger of intrusting power to Congress; we are told it is dangerous to trust power anywhere; that power is liable to abuse,—with a variety of trite maxims of the same kind. General propositions of this nature are easily framed, the truth of which cannot be denied, but they rarely convey any precise idea. To these we might oppose other propositions, equally true and equally indefinite. It might be said that too little power is as dangerous as too much; that it leads to anarchy, and from anarchy to despotism. But the question still recurs: What is the too much or too little? Where is the measure or standard to ascertain the happy mean?

Power must be granted, or civil society cannot exist; the possibility of abuse is no argument against the thing. This possibility is incident to every

species of power, however placed or modified. The United States, for instance, have the power of war and peace; it cannot be disputed that conjunctures might occur in which that power might be turned against the rights of the citizen. But where can we better place it?. In short, where else can we place it at all?

In our State constitutions, we might discover powers liable to be abused to very dangerous purposes. I shall instance only the council appointments. In that council the governor claims and exercises the power of nominating to all others.

This power of nomination, in its operation, amounts to a power of appointment, for it can always be so managed as to bring in persons agreeable to him and exclude all others. Suppose a governor disposed to make this an instrument of personal influence and aggrandizement; suppose him inclined to exclude from office all independent men, and to fill the different departments of the State with persons devoted to himself, what is to hinder him from doing it? Who can say how far the influence arising from such a prerogative might be carried? Perhaps this power, if closely inspected, is a more proper subject of republican jealousy, than any power possessed by or asked by the United States—fluctuating and variable as this body is. But as my intention is not to instil any unnecessary jealousies, I shall prosecute these observations no further. They are only urged to show the imperfections of human institutions, and to confirm the principle that the possibility of a power being abused is no argument against its exist-

ence. Upon the whole, let us venture with caution upon constitutional ground. Let us not court nor invite discussions of this kind. Let us not endeavor still more to weaken and degrade the Federal Government by heaping fresh marks of contempt on its authority. Perhaps the time is not far distant when we may be inclined to disapprove what we now seem anxious to commend, and may wish we had cherished the Union with as much zeal as we now discover apprehension of its encroachment.

I hope, Mr. Chairman, the House will not agree to the amendment. In saying this I am influenced by no other motive than a sense of duty. I trust my conduct will be considered in this light. I cannot give my consent to put any thing upon our minutes which, it appears to me, we may one day have occasion to wish obliterated from them.

January 23d

[The House resolved itself into a Committee of the Whole on the paragraph in the election bill enabling the inspector to take aside any ignorant person and examine him privately touching his ballot. A debate arose.]

Col. Hamilton thought it was very apparent, if the clause prevailed, that it would tend to increase rather than prevent an improper influence. For, though an inspector takes an oath that his conduct shall be impartial, yet he can easily interpret the oath so as to correspond with his own wishes. If he is an honest man, he will think the public good concerned in promoting a candidate to whom he is attached; and under this impression may see no harm in recommending him to a person offering his

vote. His suggestion will be generally attended with success, and the consequence will be that the inspector will have the disposition of the votes of almost all unlettered persons in favor of the party to which he inclines. Here, then, is a more concentred influence over the illiterate and uninformed part of the community, than they would have been subject to if left to themselves. Here they will be liable to an influence more dangerous than the one we wish to avoid. The question then is, whether it is better to leave them to an accidental influence or imposition, or to subject them to a more regular and extensive influence. The appointment of inspectors will then become more than it is, an object of party, and it will always be in their power to turn the scale of a contested election. On the contrary, if the voters are left to themselves, the activity of the different parties will make the chance equal; and the influence on one hand will be balanced by an equal degree on the other. I move we strike out the clause.

[Mr. Jones did not agree; thought inspector's influence would be good, he being under oath, and a man of reputation. Mr. Harper thought inspectors should be obliged not to mention, nominate, or propose any person whatever.]

Col. Hamilton observed this was one of those subjects more plausible in theory than practice. The gentleman's reply did not answer, nor could it, the objections he had made. The question is, whether it is better to let the illiterate take the chance of imposition from two parties equally active, the imposition of the one side being equally balanced by the exertions of the other, or leave it to party views con-

centred in one person on whom the certain fate of the election depends. I do not mean to impeach the actions of the inspectors, for at present they can have little bias; but if the clause takes place, though an inspector means to do his duty impartially, yet I believe his friendly attention to A being more than to B will lead us to conceive that he will have little scruple to ask for the vote for A, whom he recommends to be as good or a better person than the other. Now if this happen, sure, there are very few ignorant persons but will be greatly influenced by such inspectors, and on them turns the fate of the elections. There is also another reason which should induce us not to admit the proposed mode: it will occasion a great delay, as some inspectors will have to take down and examine the tickets proposed by the illiterate, while the others will find it difficult to attend to the polls. There is therefore the objection of delay as well as influence to avoid, which makes it necessary to strike out the clause altogether. I repeat once more it is better to leave them to parties who are equal in their exertions, equally send about tickets, and whose chance of influence is equal.

[After more debate the question was put on striking out, and lost.]

January 24th

[The House went into a Committee of the Whole on the election bill. A debate arose upon the clause authorizing the inspector, or any other person offering himself to poll, to take an oath of abjuration of ecclesiastical as well as civil obedience. Mr. Jones did not think it proper to make alteration. Oath of naturalization provides for this point. He went on ground of Constitution, and no other. House could not make any alteration.]

Mr. Hamilton declared the Constitution to be their

creed and standard, and ought never to be departed from; but in the present instance it was proper first to examine how far it applied to the subject under consideration: that there were two different bodies in the State to which this has reference; these were the Roman Catholics already citizens and those coming from abroad. Between these two were great distinctions. The foreigner who comes among us and will become a citizen, who wishes a naturalization, may with propriety be asked these terms; it may be necessary he should abjure his former sovereign. For the natural subject, the man born amongst us, educated with us, possessing our manners, with an equally ardent love of his native country, to be required to take the same oath of abjuration—what has he to abjure? He owes no fealty to any other power upon earth; nor is it likely his mind should be led astray by bigotry or the influence of foreign powers. Then, why give him occasion to be dissatisfied with you, by bringing forward a test which will not add to his fidelity? Moreover, the clause in the Constitution confines this test to foreigners, and, if I am not misinformed, it was not till after much debate and warm contention that it got admittance, and then only by a small majority in the convention.

It was a question with him whether it was proper to propose this test in the case before them. But he was decidedly against going so far as to extend it to ecclesiastical matters. Why should we wound the tender conscience of any man? and why present oaths to those who are known to be good citizens?

Why alarm them? Why set them upon inquiry which is useless and unnecessary? You give them reason to suppose that you expect too much of them, and they cannot but refuse compliance. The Constitution does not require such a criterion to try the fidelity of any citizen. It is solely intended for aliens and foreigners coming from abroad, with manners and habits different from our own, and whose intentions are concealed.

Instead, Mr. Chairman, of going so far, I would propose to stop at the word State, and strike out all that followed. Then it would read thus:

"I, ——, do swear, etc., that I renounce and abjure all allegiance and obedience to the king of Great Britain, etc., and to every foreign king, prince, power, potentate, and state."

This will bind the person only in civil matters, and is all that we ought or can require. A man will not then be alarmed in his interpretation, and it will not set his mind to inquire if his religious tenets are affected, and how much inconvenience would be avoided. Again, sir, we should be cautious how we carry the principle of requiring and multiplying tests upon our fellow-citizens, so far as to practise it to the exclusion and disfranchisement of any. And as a doubt must arise with every member on the propriety of extending this abjuration oath, it will be their best mode to decide for the amendment, as in all cases where there is a doubt it is our duty to oppose the measure.

[Mr. Harper thought oath a proper one, and should vote for it.]

Mr. Hamilton mentioned again that, so far as the

Constitution went, it was a rule, and must be adopted, but he questioned the propriety of extending it.

[Whole clause, without amendment, was agreed to.]

[Another clause in the bill ordered the judges of election for governor and lieutenant-governor to destroy the whole ballot of every district where there was an excess of even one vote.]

Mr. Hamilton showed this to be a very great injustice to the district, as it was in the power of the clerk or any officer, by putting in an additional ballot, to set aside the votes of five hundred persons; he therefore moved that, in any case where there was an excess, such excess should be destroyed by lot.

[Motion opposed by Mr. Jones and adopted.]

January 27th

[Discussion on clause in election bill prohibiting pensioners, and officers under Congress from sitting in Assembly or Senate. Question arose whether the Legislature possessed the power of abridging the constitutional rights of the people.]

Mr. Hamilton observed they were going on dangerous ground. The best rule the committee could follow was that held out in the Constitution, which it would be safest to adhere to without alteration or addition. If we once depart from this rule, there is no saying where it will end. To-day, a majority of the persons sitting here, from a particular mode of thinking, disqualify one description of men. A future Legislature, from a particular mode of thinking in another point, disqualify another set of men. One precedent is the pretext of another, till we narrow the ground of qualifications to a degree subversive of the spirit of the Constitution. It is impossible to suppose that the convention who framed the

Constitution were inattentive to this point. It is a matter of too much importance not to have been well considered; they have fixed the qualifications of electors with precision; they have defined those of senator and governor, but they have been silent as to the qualifications of members of Assembly. It may be said that, being silent, they have left the matter to the discretion of the Legislature. But is not the language of the framers of the Constitution rather this: We will fix the qualifications of electors; we will take care that persons absolutely indigent shall be excluded; we will provide that the right of voting shall be on a broad and secure basis; and we will trust to the discretion of the electors themselves the choice of those who are to represent them in Assembly. Every qualification implies a disqualification. The persons who do not possess the qualification required are ineligible. Is not this to restrain the freedom of choice allowed by the Constitution to the body of electors? An improper exercise of this liberty cannot constitutionally be presumed. Why, therefore, should we circumscribe it within limits unknown to the Constitution? Why should we abridge the rights of any class of citizens in so important an article?

By the Constitution every citizen is eligible to a seat in the Assembly. If we say certain descriptions of persons shall not be so eligible, what is this but to deprive all those who fall within that description of an essential right allowed them by the Constitution?

I have observed that if we once break the ground

of departing from the simple plan of the Constitution, it may lead us much further than we now intend. From the prevalency of a certain system it is now proposed to exclude all persons from seats who hold offices under Congress. The pretence is to guard against an improper influence. I may think another species of influence more dangerous. I have taken notice, upon a former occasion, of the decisive agency of the Executive in the appointment of all officers. If the persons who derive their official existence from that source sit in this House, it cannot be denied that it might give the executive an undue influence in the Legislative deliberations. If, in the vicissitude of human events, a majority of a future Legislature should view the subject in this light, and if the principle of a right to admit disqualifications unknown to the Constitution be admitted in practice, all persons holding office under the State would then be excluded. I wish here to be clearly understood. I mean only to reason on general principles, without any particular reference whatever. I have hitherto confined myself to the general principle of the clause. There are, however, particular objections. One just occurs to me: there are officers who have been wounded in the service, and who now have pensions under the United States as the price of their blood; would it be just, would it not be cruel on this account to exclude men from a share in the government which they have at every hazard contributed to establish? This instance strikes me; other members may probably think of other cases equally strong against the exclusion; further reflec-

tions may suggest others that do not now occur. If the committee, however, should resolve to adopt it; for the sake of consistency they must carry it one step further—they must say that no member of Congress shall hold a seat. For surely if it be dangerous that the servants of Congress should have a seat in this House, it is more dangerous that the members themselves should be allowed this privilege.

But I would not be understood to advocate this extension of the clause. I am against the whole business. I am for adhering to the present provisions of the Constitution. I repeat, if we once break the ground of innovation, we may open the door to mischief which we neither know nor think of.

[Mr. Jones opposes Mr. H.'s opinion and wishes clause retained.]

Mr. Hamilton.—I still continue, Mr. Chairman, of the same opinion on this subject. The more I consider the matter, the more forcibly am I struck that it will be dangerous to introduce qualifications unknown to the Constitution. Is it possible to suppose the framers of the Constitution were inattentive to this important subject, or that they did not maturely consider the propriety of annexing qualifications to the elected? From the silence of the Constitution it is inferred that it was intended to leave this point to the discretion of the Legislature. I rather infer that the intention of the Constitution was to leave the qualifications of their representatives wholly to the electors themselves. The language of the Constitution: Let us take care that the persons to elect are properly qualified, that they are in such a situation in point of property as not to be

absolutely indigent and dependent, and let us trust to them the care of choosing proper persons to represent them. The Constitution will not presume that whole districts and counties of electors duly qualified will choose men improper for the trust. Let us, on our part, be cautious how we abridge the freedom of choice allowed them by the Constitution, or the right of being elected, which every citizen may claim under it. I hold it to be a maxim which ought to be sacred in our form of government, that no man ought to be deprived of any right or privilege which he enjoys under the Constitution, but for some offence proved in due course of law. To declare qualifications or disqualifications by general descriptions in legislative acts, would be to invade this important principle. It would be to deprive in the gross all those who had not the requisite qualifications, or who were objects of those disqualifications, to that right to a share in the administration of the republic which the Constitution gives them, and that without any offence to incur a forfeiture. As to the objection that the electors might even choose a foreigner to represent them within the latitude of the Constitution, the answer is that common sense would not tolerate such a construction. The Constitution, from the fundamental policy of a republican government, must be understood to intend citizens. But the gentleman (Mr. Jones) has not adverted to the fact that the same difficulty would attend the case of electors where he admits there is no power in the Legislature to make alterations. The expression there is, every male inhabitant possessed of certain

property shall vote; but there surely could never be a doubt that such inhabitant must also be a citizen.

But let us pursue the subject a little further: commerce, it will be admitted, leads to an increase of individual property; property begets influence. Though a Legislature composed as we are will always take care of the rights of the middling and lower classes, suppose the majority of the Legislature to consist at a future day of wealthy men, what would hinder them, if the right of innovating on the Constitution be admitted, from declaring that no man not worth ten thousand pounds should be eligible to a seat in either House? Would not this introduce a principle fatal to the genius of our present Constitution?

In making this observation, I cannot be suspected of wishing to increase the jealousy—already sufficiently high—of men of property. My situation, prospects, and connections forbid the supposition. But I mean to lay honestly before you the dangers to which we expose ourselves by letting in the principle which the clause under consideration rests upon. I give no opinion on the expediency of the exclusion proposed. I only say, in my opinion the Constitution does not permit it, and I shall be against any qualification or disqualification—either of electors or elected—not prescribed by the Constitution. To me it appears that the qualifications of both ought to be fundamental in a republican government, not liable to be varied or added to by the Legislature, and that they should for ever remain where the Constitution has left them. I see no other safe ground. It is

to be lamented that men, to carry some favorite point in which their party or prejudices are interested, will inconsiderately introduce principles and precedents which lead to successive innovations destructive of the liberty of the subject and the safety of the government. For my part, I shall uniformly oppose every innovaton not known in the provisions of the Constitution. I therefore move that the clause be struck out.

February 6th

[Discussion on amendment to exclude all British adherents who had been engaged in privateering in war.]

Mr. Hamilton observed that, when the discriminating clauses, admitted into the bill by that House were introduced, he was restrained, by motives of respect for the sense of a respectable part of the House, from giving it any further opposition than a simple vote. The limited operation they would have, made him less anxious about their adoption. But he could not reconcile it to his judgment or feelings to observe a like silence on the amendment proposed by the Senate. Its operation would be very extensive; it would include almost every man in the city engaged in navigation during the war.

We had, in a former debate, travelled largely over the ground of the Constitution, as applied to legislative disqualifications. He would not repeat what he had said, but he hoped to be indulged by the House in explaining a sentence in the Constitution, which seems not well understood by these gentlemen. In one article it says, that no man shall be disfranchised or deprived of any right he enjoys under

the Constitution, but by the law of the land or the judgment of his peers.

Some gentlemen hold that the law of the land will include an act of the Legislature. But Lord Coke, that great luminary of the law, in his comment upon a similar clause in Magna Charta, interprets the law of the land to mean presentment and indictment and process of outlawry, as contradistinguished from trial by jury. But if there were any doubt upon the Constitution, the bill of rights enacted in this very session removes it. It is there declared that no man shall be disfranchised or deprived of any right but by due process of law, or the judgment of his peers. The words "due process" have a precise technical import, and are only applicable to the process and proceedings of courts of justice; they can never be referred to an act of the Legislature.

Are we willing, then, to endure the inconsistency of passing a bill of rights and committing a direct violation of it in the same session? In short, are we ready to destroy its foundations at the moment they are laid?

Our having done it, to a certain degree, is to be lamented; but it is no argument for extending it.

He would now make some remarks on the expediency and justice of the clause, distinct from constitutional considerations.

The word privateer is indefinite. It may include letters of marque. The merchants of this city during war must, generally speaking, abandon their means of livelihood or be concerned in navigation. If concerned in navigation, they must of necessity have

their vessels armed for defence. They would naturally take out letters of marque. If every owner of a letter of marque is disfranchised, the body of your merchants will probably be in this situation. Is it politic or wise to place them in it? Is it expedient to force, by exclusions and discriminations, a numerous and powerful class of citizens to be unfriendly to the government?

He knew many individuals who would be comprehended, who are well affected to the prosperity of the country, who are disposed to give every support to the government, and who, some of them at least, even during the war had manifested an attachment to the American cause. But there is one view in which the subject merits consideration, that must lay hold on all our feelings of justice. By the maritime law, a majority of the owners have a right to dispose of the destination of the vessel. The dissent of the minority is of no avail. It may have happened, and probably has happened in many instances, that vessels have been employed as privateers on letters of marque, by a majority of the owners, contrary to the sense of the minority.

Would it be just to punish the innocent with the guilty, to take away the rights of the minority for an offence committed by the majority, without their participation, perhaps contrary to their inclination?

He would mention a further case, not equally strong, but of considerable force to incline the House against the amendment. He had been informed that in one or more instances during the war, some zealous people had set on foot subscriptions for fitting

out privateers, perhaps at the instigation of the British Government; and had applied to persons suspected of an attachment to us to subscribe, making their compliance a test of their loyalty. Several individuals, well disposed to our cause, to avoid becoming objects of persecution, had complied; would it not be too rigorous to include them in so heavy a penalty? But if there are any of us who are conscious of greater fortitude, such persons should not on that account be too severe on the weakness of others. They should thank nature for its bounty to them, and should be indulgent to human frailty. How few are there who would have had strength of mind enough in such circumstances to hazard, by a refusal, being marked out as the objects of military resentment? I hope, Mr. Speaker, as well from motives of justice, as a regard to the Constitution, we shall stop where we are, and not go any farther into the dangerous practice of disqualifying citizens by general descriptions. I hope we shall reject the amendment, sir!

[Question was determined in the negative.]

February 14th

[Bill considered for settling intestate estates, proving wills, and granting letters of administration.]

Mr. Hamilton said he did not rise to oppose the motion of the gentleman who last spoke [Jones]. He should probably vote with him on the question; but he confessed he did not view it in quite so clear a light as that gentleman appeared to do. There appeared to him to be difficulties in the case, which he would candidly lay before the House to assist its

judgment. The objection is that a new court is erected or an old one invested with a new jurisdiction, in which it is not bound to proceed according to the course of the common law. The question is, What is meant in the Constitution by this phrase, "the common law"? These words have in a legal view two senses, one more extensive, the other more strict.

In their most extensive sense they comprehend the constitution of all those courts which were established by immemorial custom, such as the Court of Chancery, the Ecclesiastical Court, etc., though these courts proceed according to a peculiar law. In their more strict sense they are confined to the course of proceedings in the courts of Westminster in England, or in the Supreme Courts in this State. If the words are understood in the first sense, the bill under consideration is not unconstitutional; if in the last, it is unconstitutional. For it gives to an old court a new jurisdiction, in which it is not to proceed according to the course of the common law in this last sense. And to give new jurisdiction to old courts, not according to the course of the common law, is in my opinion as much an infringement in substance of this part of the Constitution, as to erect new courts with such jurisdiction. To say the reverse would be to evade the Constitution.

But though I view it as a delicate and difficult question, yet I am fairly inclined to think that the more extensive sense may be adopted; with this limitation, that such new jurisdiction must proceed according to the course of those courts having by

the common law cognizance of the *subject-matter*. They ought, however, never to be extended to objects which at common law belonged to the jurisdiction of the courts at Westminster, and which, in this State, are of the peculiar cognizance of the Supreme Court. At common law, the Ecclesiastical Courts, not the courts of Westminster, had cognizance of intestacies and testamentary causes. The bill proposes that the Court of Probate shall have cognizance of the same causes and proceed in the same manner as the Ecclesiastical Courts, except as to inflicting ecclesiastical penalties.

This distinction I have taken will, I think, bear us out in passing the bill under consideration. But it is certainly a point not without considerable difficulty.

[Question was called and put: Will the House pass the law? Determined in the affirmative.]

February 17th

[House went into Committee of Whole on Tax Bill.]

Mr. Hamilton observed that, as the present bill exhibited a new system of taxation, it might be proper to enter into some explanations of its principles. It was agreed on all hands that the system heretofore in use was full of defects, both in the view of equality among individuals and of revenue to the State. From the Legislature to the assessor, all was conjecture and uncertainty. To begin with the Legislature,—what criterion could any man possibly have by which to estimate the relative abilities of the several counties? For his part he had thought maturely of the subject, but could find none. The whole must either be a business of honest guessing,

or interested calculations of county convenience, in which each member would seek to transfer the burden from his own county to another. The same thing must happen in the subdivisions among the districts by the supervisors; and, in a still more striking manner, in the apportionment of the tax to individuals by the assessors. How can they possibly ascertain the comparative abilities of individuals?—appearances more than realities must govern. The merchant or factor who has a large store of goods, for which, perhaps, he owes more than the amount, will pay much more than a man of less apparent gains, though ten times as much property. This he mentioned by way of example. The same thing happened among other orders of society. To-day, an assessor, my friend, taxes me at ten pounds. To-morrow, one less my friend will tax me four times the sum. Infinite differences must happen from the different degrees of judgment men possess, from their different biasses and inclinations. A great inequality results, and all is uncertainty.

Theoretical and practical financiers have agreed in condemning the arbitrary in taxation. By the arbitrary is meant the leaving the amount of tax to be paid by each person to the discretion of the officers employed in the management of the revenue. It is indeed another word for assessment, where all is left to the *discretion* of the assessors.

The English writers have justly boasted the superiority of their system over that of France and some other countries; because little or nothing is left to the discretion of the officers of the revenue.

And the ablest observers among the French have acknowledged the advantage. The celebrated M. Necker in a late publication has taken especial notice of this circumstance. The opinion of that statesman, who conducted the finances of France for several years, and during the most critical periods of the late war, with infinite ability and success, is a most respectable authority in a matter of this kind.

These had no small share in his disapprobation of a practice which puts one citizen so much in the power of another.

He would not say that the practice was contrary to the provisions of our Constitution; but it was certainly repugnant to the genius of our government. What is the power of the supervisors and assessors, but a power to tax in detail, while the Legislature taxes in gross? Is it proper to transfer so important a trust from the hands of the Legislature to the officers of the particular districts? Equality and certainty are the two great objects to be aimed at in taxation. The present bill does not pretend to reach absolute equality. This is impossible. No human plan can attain it. The variety of circumstances to be taken into the calculations are too complicated to be comprised in any scheme that could be devised. But the principles of the present bill will approach much nearer to equality than the former system, and it will have the great advantage of certainty. It leaves nothing to discretion. Every man can himself estimate what he has to pay, without being dependent on the caprices, the affections, or the enmities of another.

The bill in its present form is but an imperfect sketch. It is in the power of the committee to make it better. No doubt the combined wisdom of the House will improve it. The land tax, in particular, may require great alterations. He had not been able to satisfy himself on this part of the plan. All this was, of course, submitted to the discretion of the committee. One thing only was clear. Any change would be for the better, and time and experience would mature and ameliorate it.

[The bill was taken into consideration. Amendments were proposed and adopted.]

February 21st

[Debate on fees allowed for certain legal services.]

Col. Hamilton expressed a hope that the House would not carry matters to an extreme. It would be, he thought, as improper to make the fees of the profession too low as to make them too high. Gentlemen who practised the law, if they were men of ability, would be paid for the services required of them; and if the law did not allow a proper compensation, it would be evaded. Names might be given to things and charges made; against which there would be no guard. In Pennsylvania and Jersey attempts had been made to reduce the emoluments of the profession below the proper standard. This had afforded no relief; on the contrary, the expenses of the law and the profits of the practisers had increased since the experiment, the only effect of which had been to transfer the expense from the delinquent debtor to the injured creditor. If the legal fees amount to a compensation, in most cases the

practiser would content himself with them; if they did not, he would consider himself justified in making the best bargain he could,—the consequences of which were obvious. While differences would arise among mankind, and that there would be differences was certain, lawyers would be necessary, and for their services they would be paid. He, therefore, was of the opinion, that in going through the bill, the House should agree that reasonable allowances should be made for the services mentioned in the bill, or they would defeat their own object.

March 8th

[Motion that no freeholder or citizen shall be hereafter imprisoned for any sum less than £10, but that execution shall issue and remain in force against the debtor till, from time to time by different seizures of his effects, the creditors shall be satisfied.]

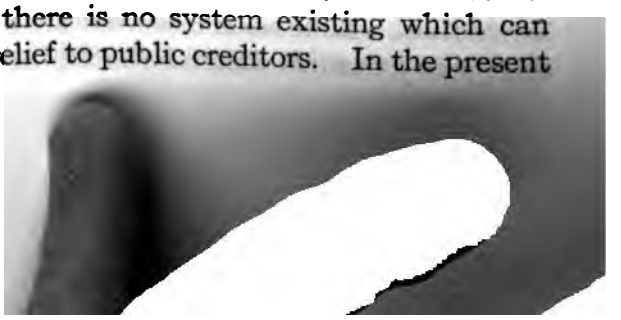
Col. Hamilton confessed that his own judgment was not clearly made up on this subject. It was not, however, a new one to him. It was a question which had two sides, both of which deserved a serious attention. The clause as it stood, in his opinion, was not proper. It might be right to say what shall be done in future contracts. But it will be wrong to meddle with the past. It was very probable, if the clause was passed, it would prevent people in poor circumstances from getting assistance from the wealthy; this ought to be considered. Many a poor man who can be favored with a credit of £10 finds a material advantage in it; if the security be taken away there will be an end to credit. He would wish that every man in distress should meet relief. He

was willing to come into any measure that would effect this purpose.

March 20th

[Debate on bill for relief of certain public creditors.]

Col. Hamilton supposed that it was agreed on all hands that some relief should be granted. There were, he said, two questions before the committee: one, if they would put them on a footing with other citizens; and the other, if they did not merit something more. If, said he, you receive their certificates and grant them your own, you extend to them only that relief which you have already given to your other citizens, who purchased up the loan-office certificates of other States. But there can be no difference between any one species of our debt; and there can be no substantial difference between taking a certificate of this State and a certificate of the United States. Much has been said about discriminating, but all arguments of discrimination amount to nothing. Whether we, by this assumption, make our State a creditor State or not, cannot be determined. The present calculation of the public debts is no criterion to go by. He remembered, he said, that when he was in Congress the liquidated debt was somewhere about $40,000,000, and that it was supposed the unliquidated debt was $40,000,000 more. If this is the case, which he believed it was, the State of New York would be a debtor State. From the situation of public affairs, it is to be regretted that there is no system existing which can give general relief to public creditors. In the present



instance, it is only required that you do that justice to one part of your citizens which you have already done to another part. If we should make our State a creditor State, by extending this relief to our citizens, can we not obtain redress, if our Confederation exists, and God forbid that it may not? He was willing, he said, to extend the relief; he did not want to confine it to any particular class of people.

March 21st

[Debate on repealing part of the Trespass Act.[1]]

Col. Hamilton said that this amendment to the trespass law was only to repeal that part which was in violation of the public treaty. The courts of justice were at present in a delicate dilemma, obliged either to explain away a positive law of the State, or openly violate the national faith by counteracting the very words and spirit of the treaties now in existence. Because the treaty declares a general amnesty, and this State, by this law declares that no person shall plead any military order for a trespass committed during the war. He said no State was so much interested in the due observance of the treaty as the State of New York, the British having possession of its western frontiers, and which they hold under the sanction of our not having complied with our national engagements. He hoped the House would have too much wisdom not to do away this exception, and indeed he expected the bill would be readily agreed to.

[Bill was agreed to almost unanimously.]

[1] This was an Act to punish persons who held property of patriots during the war, and to prevent their pleading a military order in defence.

March 22d

[Motion for laying £13,000 tax on New York County.]

Col. Hamilton did not suppose that any arguments would have much influence on the decision of this question. There is no criterion to go by, and we fall into the greatest uncertainty. A gentleman has told us plainly, that he has been intriguing and making the best bargain for his county. He would not say that New York had made any conditions. He hoped that the intrigues might not have the effect that was sought. The county of Albany, he said, was always rated too low. It was only required to pay £7,000 with 70,000 inhabitants; while Suffolk, with only 14,000, paid £4,500. He asked if the House would permit intrigues to have such an effect. The county of Kings, which numbers only 3,000 inhabitants, and contains 18,500 acres of land, is to pay £2,400. Richmond County, which is equally small, is also overrated; is this right? New York had ever been rated too high. One of the gentlemen from New York had proposed £12,000 from the mere despair of coming at an equality, but this sum is too high. He asked if it was justice that the city and county of New York, which was not a tenth part of the value or population of the State, should bear one fourth of its burdens. He hoped this would be considered, and no partiality exhibited by the Legislature.

March 24th

[Bill for establishing university.]

Col. Hamilton hoped that the House would not recommit the bill. There was no doubt, he said,

but the Legislature possessed the right to give this power. There were frequent examples of the kind in Great Britain, where this power had been granted. No disadvantage, he said, could arise from it; on the contrary, many would be the benefits. He therefore wished the bill might be finished, as no doubt existed with him of the power and the propriety of the Legislature granting those privileges which were mentioned in the bill.

April 12th

[Bill to repeal citation acts.]

Mr. Hamilton advocated the bill with great ability and candor. He mentioned the bad effects of the present laws, the difficulties that the courts of justice threw in the way of them, and the impossibility ever to amend them in such a manner as to have them acted upon. He urged the influence the opinion of our courts ought to have on the Legislature. The courts were not interested, and their decisions were perfectly impartial. He asked if the Southern District of the State, instead of having fared tolerably well, had been ruined, would the Legislature have compelled their debtors who were without the lines to have paid additional sums. This he did not believe. And why, then, said he, compel the creditors to take a less sum? He mentioned that in several instances the severity of the law fell on gentlemen who were attached to the American cause, and who had acted meritoriously in the Revolution. It was certainly not right to view all the creditors as enemies. Remarking on the ill effects of the

Legislature interfering in private contracts, and the violation of public faith which it occasioned, he observed that it would destroy all credit, and be the means of injuring many whom the Legislature had intended to benefit.

[Bill passed unanimously.]

SPEECH ON ACCEDING TO THE INDEPENDENCE OF VERMONT

April.—The counsel for the petitioners has entered into a large field of argument against the present bill. He has endeavored to show that it is contrary to the Constitution, to the maxims of sound policy, and to the rights of property. His observations have not been destitute of weight. They appear to have the more force, as they are to a certain degree founded in truth. But it is the province of the committee to distinguish the just limits of the principles he has advanced; how far they extend, and where they terminate. To aid the committee in this inquiry shall be my endeavor, and following the counsel for the petitioners through the different heads of his argument, I hope to be able to show, that neither of the objections he has urged stands in the way of the measure proposed, and that the Constitution permits, policy demands it, and justice acquiesces in its adoption.

The first objection is drawn from that great principle of the social compact,—that the chief object of government is to protect the rights of individuals by the united strength of the community. The justness

of this principle is not to be disputed, but its extent remains to be ascertained. It must be taken with this limitation: The united strength of the community ought to be exerted for the protection of individuals so far as there is a rational prospect of success; so far as is consistent with the safety and well-being of the whole. The duty of a nation is always limited by these considerations: It is bound to make efforts and encounter hazards for the protection of its members, proportioned to its abilities, warranted by a reasonable expectation of a favorable issue, and compatible with its eventual security. But it is not bound to enter into or prosecute enterprises of a manifest rashness and folly; or which, in the event of success, would be productive of more mischief than good.

This qualification of the principle can no more be denied than the principle itself. The counsel for the petitioners indeed admits it in substance, when he admits that a case of extreme necessity is an exception to the rule: but he adds that this necessity should be apparent and unequivocal.

What constitutes a case of extreme necessity admits of no precise definition. It is always a question of fact, to be determined by a consideration of the condition of the parties and the particular circumstances of the case itself. A case of necessity then exists, when every discerning unprejudiced man, well acquainted with facts, must be convinced that a measure cannot be *undertaken* or *pursued* with a probability of success. To determine this an experiment is not always necessary: circumstances may exist so decisive and palpable in their nature, as to

render it the extreme of temerity *to begin* as well as *to continue* an experiment. The propriety of doing either the one or the other must equally be decided by a judicious estimate of the national situation.

The tendency of the principle contended for, on the application of it in argument, has been to prove that the State ought to employ the common strength of the society to protect the rights of its citizens, interested in the district of territory in question, by reducing the revolted inhabitants of that district to an obedience to its laws. The inquiry therefore is: Can this be done? Is the State in a situation to undertake it? Is there a probability that the object will be more attainable at a future day? Is there not rather a probability that it will be every day more out of our reach, and that leaving things in their present state will be attended with serious dangers and inconveniences? Is it even desirable, if practicable, to reduce the people in question under subjection to this State?

In pursuing this inquiry we ought to bear in mind that a nation is never to regulate its conduct by remote possibilities or mere contingencies, but by such probability as may reasonably be inferred from the existing state of things and the usual course of human affairs.

With this caution, no well-informed mind can be at a loss in what manner to answer the questions I have proposed. A concise review of the past, and a dispassionate consideration of the present, will enable us to judge with accuracy of the obligations and interests of the State.

The pretensions to independence of the district of territory in question began shortly after the commencement of the late Revolution. We were then engaged in a war for our existence as a people, which required the utmost exertion of our resources to give us a chance of success. To have diverted any part of them from this object to that of subduing the inhabitants of Vermont, to have involved a domestic quarrel which would have compelled that hardy and numerous body of men to throw themselves into the arms of the power with which we were then contending, instead of joining their efforts to ours in the common cause of American liberty, as they for a long time did, with great advantage to it, would have been a species of frenzy, for which there could have been no apology, and would have endangered the fate of the Revolution more than any one step we could have taken.

This idea is too obvious to need being enlarged upon. The most prejudiced will acquit the State from blame for not trying the effect of force against that people during the continuance of the war. Every moderate measure, every thing short of hostility or a total sacrifice of those rights, which were the original cause of the revolt, and which are the occasion of the opposition to the present bill, were tried. Conciliating laws were passed, overtures made, negotiations carried on in Congress, but all to no purpose.

The peace found the Vermonters in a state of actual independence, which they had enjoyed for several years—organized under a regular form of

government, and increased in strength by a considerable accession of numbers. It found this State the principal seat of the war, exhausted by peculiar exertions and overwhelmed in debt. The embarrassments arising from this situation press us daily. The utmost exertion of wisdom in our public councils would not be more than equal to extricating us from them. As matters stand, the public debts are unprovided for, and the public credit prostrate.

Are we now in a situation to undertake the reduction of Vermont; or are we likely speedily to be in such a situation? Where are our resources, where our public credit, to enable us to carry on an offensive war?

We ought to recollect that, in war, to defend or attack are two different things. To the first, the mountains, the wilderness, the militia, sometimes even the poverty of a country, will suffice. The latter requires an *army* and a *treasury*.

The population of Vermont will not be rated too high, if stated at nearly one half of that of New York. Can any reasonable man suppose that New York, with the load of debt the Revolution has left upon it, and under a popular government, would be able to carry on with advantage an offensive war against a people half as numerous as itself, in their own territory; a territory defended as much by its natural situation as by the numbers and hardihood of its inhabitants? Can it be imagined that it would be able, finally, to reduce such a people to its obedience? The supposition would be chimerical, and the attempt madness.

Can we hope a more favorable posture of affairs

hereafter? Will not the population and strength of Vermont increase in ratio to our own? There is, perhaps, no essential difference between their government and ours. The necessity of making provision, in one way or another, for the exigencies of the Union, and for the discharge of the debts of the State, must continue to subject our citizens to heavier burthens than are borne by the inhabitants of that country, who have no call for revenue beyond the support of their domestic administration. A country possessing a fertile soil, exempt from taxes, cannot fail of having a rapid growth.

The enterprise will of course become more difficult by delay; and procrastination can only serve to render the claims of the State and its citizens, in the opinion of mankind, obsolete, and to give the consent of time to the connection which the people of Vermont have, in all appearance, already formed with the British Government. This last point I shall discuss more fully in another place.

I have confined myself in my reasoning to an examination of what is practicable on the part of this State alone. No assistance is to be expected from our neighbors. Their opinion of the origin of the controversy between this State and the people of Vermont, whether well or ill founded, is not generally in our favor; and it is notorious that the Eastern States have uniformly countenanced the independence of that country. This might suggest to us reflections that would confirm the belief of the impracticability of destroying, and the danger of attempting to destroy, that independence.

The scheme of coercion would ill suit even the disposition of our own citizens. The habits of thinking to which the Revolution has given birth, are not adapted to the idea of a contest for dominion over a people disinclined to live under our government. And, in reality, it is not the interest of the State ever to regain dominion over them by force. We shall do well to advert to the nature of our government, and to the extent of this State, according to its acknowledged limits. Are we sure we shall be able to govern what we already possess? or would it be wise to wish to try the strength of our government over a numerous body of people disaffected to it, and compelled to submit to its authority by force? For my part I should regard the reunion of Vermont to this State as one of the greatest evils that could befall it; as a source of continual embarrassment and disquietude.

It is hinted by the counsel for the petitioners, that many of the inhabitants of Vermont are desirous of living under our government; and sanguine tempers have long ago predicted that they would shortly grow weary of their independence, throw it off, and become reunited with us and New Hampshire, of their own accord. There are clear principles of human nature, to which we may resort to falsify this prediction. In popular governments, the sentiments of the people generally take their tone from their leaders. The leaders of Vermont cannot desire a reunion with New York, because this would amount to an abdication of their own power and consequence. The people of Vermont will not desire it; because no

people ever desired to pass from a situation in which they were exempted from taxes, and in which they suffered no particular oppression, to one in which they would be subject to burthens comparatively heavy.

I pass now to an examination of the constitutionality of the measure proposed by the bill. It is observed, that by the Constitution the counties of Charlotte, Cumberland, and Gloucester, are constituent parts of the State; that one article of it declares that no power shall be exercised over the people, but such as is derived from and granted by them; that no express power is given to the Legislature to dismember any part of the State; and that this silence of the Constitution is a tacit reservation of that power to the people.

To all this I answer, that the sovereignty of the people, by our Constitution, is vested in their representatives in Senate and Assembly, with the intervention of the Council of Revision, and, that the power of dismembering the State, under certain circumstances, is a necessary appendage of the sovereignty. The practice of nations, and the authority of writers, conspire to establish this principle; and the safety of society requires it. There are certain situations of kingdoms and states, in which the sacrifice of a part is essential to the preservation or welfare of the rest.

History furnishes abundant examples of such sacrifices. Nations, in making peace, frequently cede parts of their territories to each other. Civil commotions have many times produced similar

dismemberments. The monarchy of Spain, after a destructive and fruitless contest to preserve it, was obliged, at last, to surrender its dominion over the Netherlands. The crown of Austria was, in like manner, compelled to abandon its jurisdiction over the Swiss Cantons. And the United States are a recent and still more signal instance of the exercise of the same right. Neither of these instances has been censured or condemned, nor the power of the sovereign to accede to the separation called in question.

The celebrated author quoted by the counsel for the petitioners is explicit on this article, and decides with clearness that the prince or body intrusted with the sovereign authority may, in certain emergencies, dismember the empire, and lop off a limb for the good of the body. This inference from the silence of a constitution, is the reverse of that drawn by the counsel of the petitioners. Doubts have been raised by particular theorists upon the subject; but their theories were too abstract for practice, and are now exploded by the ablest writers on the laws of nations. Indeed, those doubts were chiefly applied to the case of a cession, or relinquishment, of a part of the empire still in possession of the sovereign. It has long been considered as a clear point, that where a part of an empire is *actually severed*, by conquest, or a revolution, the prince, or body vested with the administration of the government, has a right to assent to and to ratify that separation. This is an obvious and important distinction; from which other inferences of moment will be drawn in another place. It will be found in Vattel, book four, chapter second.

Vermont is, in fact, severed from New York, and has been so for years. There is no reasonable prospect of recovering it, and the attempt would be attended with certain and serious calamities. The Legislature have, therefore, an undoubted right to relinquish it, and policy dictates that it should be done.

It is of no force to say that this principle would authorize the dismemberment of Long Island, or of any other part of the State. There is no doubt, the same circumstances concurring, the same consequences would result, but not sooner; and it will be the duty of the State to endeavor to prevent a similar extremity.

The next thing, in the order observed by the counsel for the petitioners, that presents itself to our discussion, is the policy of the measure.

Against this it is objected, that the precedent would be dangerous, that the facility with which the Vermonters will have accomplished their object, might invite other parts of this State and the United States to follow their example.

To this I answer, that examples have little to do with the revolutions of empire. Wherever such a state of things exists as to make it the interest or the inclination of a large body of people to separate from the society with which they have been connected, and at the same time to afford a prospect of success, they will generally yield to the impulse, without much inquiry or solicitude about what has been done by others, or upon other occasions; and when this is not the case, precedents will never create the

disposition. Events of this kind are not produced or controlled by the ordinary operations of human policy, care, or contrivance.

But, whatever may be the effect of the example, it is too late to prevent or redress the evil. It sprang up under circumstances which forbade the application of an effectual remedy, and it has now acquired a maturity which would mock all our efforts to counteract it. Vermont is lost to New York, beyond the possibility of a recovery; and a passive acquiescence in its independence cannot make it more formidable, as an example, than a direct recognition of it. Success and impunity are the ingredients that are to constitute the force of the example, and these will exist in either case.

On the other hand, the policy of the measure results from two important considerations. The one, that by the union of Vermont to the Confederacy, it must of course bear a proportion of the public burdens; the other, that it would be detached from the completion of a connection, already in all appearance begun, with a foreign power. The incorporation of Vermont into the Confederacy is by the bill made an express condition of the acknowledgment of their independence.

The first advantage was too obvious to be denied, though observations have been made to diminish its importance. Its inland situation has been noted as a circumstance that precluded the expectation of any considerable revenue from it. But the same thing might be said of the interior parts of this and of the other States; and yet we should make a much

worse figure than we do if our resources were to be drawn wholly from our Atlantic settlements. The country of Vermont is fertile and will soon be populous, and the resources which it may be capable of affording at a day not far remote, though not of great magnitude, will by no means be contemptible.

But the principal advantage to be expected from the measure is the one mentioned last. Here it is asked, Where is the evidence of the fact, where the proof of the connection? Would Great Britain, which has so recently, in a solemn treaty, acknowledged the territory in question to be comprehended within the limits of the United States, derogate from that treaty, and for so insignificant an object, as a connection with a small corner of one of the States, hazard a rupture with the whole Confederacy?

Not expecting a formal call for the evidence of the fact, my memory is not prepared to enter into all the details requisite to its full elucidation. I well remember that during the later periods of the war, a variety of circumstances produced a conviction of its existence everywhere,—in the army, in the Legislature, and in Congress. Among other transactions that came to my knowledge, I shall mention one as nearly as my recollection will serve me. Some time in the year 1781, *Fay* and *Ira Allen*, two of the most influential individuals in that country, went into Canada, and we were well informed had repeated interviews with General Haldimand. Not long after, a party of the British, under St. Leger, penetrated as far as Ticonderoga.

A detachment from that body fell in by accident

with a small party of Vermonters, fired upon them, killed one of their number, and took the rest prisoners. Discovering their mistake, they interred the dead body with the honors of war, and sent the prisoners home loaded with kindnesses and caresses. From that period a free intercourse subsisted between Canada and Vermont. This is one proof, and a pretty decisive one, to show that a connection was formed during the war. I doubt not there are others equally strong, within the recollection of other members of the committee. Since the peace, this intercourse has been cultivated with reciprocal zeal, and there are circumstances related (which I shall not repeat, as they do not come to me with sufficient authenticity) that look strongly to a continuance of the connection.

If this connection ever existed, what reason have we to believe that it has been since dissolved? To me, I confess, there appears none. On the contrary, the situation of the parties in my opinion forbids the supposition of its dissolution.

I flatter myself, those who know my manner of thinking will acquit me of a disposition to sow groundless jealousies of any nation. I consider a conduct of this kind, as undignified and indelicate in a public character; and if I were not persuaded the suspicions I entertain are well founded, no motive would have induced me to bring them forward.

It is asked, in substance, what object Great Britain can have in cultivating such connection. This admits of several answers.

Great Britain cannot but see our governments are

feeble and distracted; that the UNION wants energy, the nation concert; that our public debts are unprovided for; our federal treasuries empty; our trade languishing. She may flatter herself that this state of things will be productive of discontents among the people, and that these discontents may lead to a voluntary return to her dominion. She may hope to see in this country a counterpart of the restoration of Charles the Second. However mistaken they may be, it is not impossible, that speculations of this kind may enter into the head of a British minister.

The government lately established in Canada—the splendid title of Viceroy—seems to look beyond the dreary regions of Canada and Nova Scotia.

In this view, she would naturally lay hold of Vermont as a link in the chain of events. It would be a positive acquisition of so much, and nothing could better answer the purpose of accelerating the progress of discontent than the example of a country, part of ourselves, comparatively speaking, free from taxes. Nothing could have a more powerful influence than such an example upon the inhabitants of the settlements bordering upon that country. How far and how rapidly it might extend itself is a matter not easy to be calculated.

But laying aside every supposition of this nature, there are motives of interest which would dispose the British Government to cultivate Vermont. A connection with Vermont will hereafter conduce to the security of Canada, and to the preservation of the Western posts. That Great Britain means to retain these posts, may be inferred from the interest

she has in doing it. The ostensible reason for not having delivered them up heretofore, is the infractions of the treaty on our part; but though these infractions in some instances cannot be denied, it may fairly be presumed that they are nothing more than the pretext for withholding the posts, while the true motive is the prodigious advantage which the monopoly of the fur trade affords to the commerce of the English nation.

If Great Britain has formed the design of finally retaining those posts, she must look forward sooner or later to a rupture with this country; for, degraded as we are by our mismanagement, she can hardly entertain so mean an opinion of us as to expect we shall eventually submit to such a violation of our rights and interests without a struggle. And, in such a case, Vermont would be no despicable auxiliary.

But would Great Britain hazard a war with the United States for so inconsiderable an object?

In the first place, the object is not inconsiderable. In the next, our situation is not such as to render our resentment formidable. This situation is perhaps better understood by everybody else than ourselves; and no nation would forego a present advantage to our detriment, while it knew that a change of government must precede any inconveniences from our displeasure.

I do not suppose that the British Government would, in the present state of things, commit itself to any avowed engagements with the people of Vermont. It will, no doubt, take care to be in such a situation as to leave itself at liberty to act according

to circumstances; but it will, and I have no doubt does, by the intermediation of its officers, keep up a secret intercourse with the leaders of that people, to endeavor gradually to mould them to its interest, to be ready to convert them to its own purposes upon any favorable conjuncture or future emergency. This policy is so obvious and safe, that it would be presumable without any evidence of its existence.

On the part of Vermont, while their fate in the American scale remains suspended, considerations of safety would direct them to such a connection with the British Government. They would not choose to lie at our mercy, or to depend on their strength, if they could find refuge and support elsewhere.

There is a circumstance, too, mentioned with a different view by the counsel for the petitioners, which would contribute to this connection. I mean the relative situation of Canada and Vermont. It is asked: "May not this situation induce Vermont to regret the offer of independence, and prompt the people of that country, for the sake of commerce, to form still closer connections with a foreign power?" I ask: Does not this situation, which it is supposed might have so powerful an influence, afford a strong presumption of the existence of such a connection? And is it not our true policy to take away every additional temptation?

I shall readily admit, that it is very doubtful whether Vermont will accept the proffered acknowledgment of its independence, upon the condition annexed. I firmly believe that she does not desire it, and that she would be perplexed by the dilemma to

which she would be reduced. But whether she accepts it or not, the offer may be expected to have a good effect. It would at least serve to ascertain facts. Her refusal would be a conclusive evidence of a determined predilection to a foreign connection; and it would show the United States the absolute necessity of combining their efforts to subvert an independence so hostile to their safety. If they should find themselves unequal to the undertaking, it must operate as a new inducement to the several States to strengthen the UNION.

In every light, therefore, the measure on national ground appears advisable; but it still remains to inquire what will be our duty in respect to the citizens of this State who are owners of land in Vermont. How far shall we violate their rights, and how far are we bound to make them compensation?

The claim to a compensation is the thing which has been with most propriety urged by the counsel for the petitioners. Let us, however, examine its nature and foundation.

But, before I enter into this examination, I shall repeat an observation which I made on a former occasion. Whatever obligations there may be on the part of the State, cannot be increased by acceding to the measure proposed. If Vermont is not irretrievably lost to this State, the duty of protection which it owes to individuals obliges it to employ the common strength to reinstate them in their rights. If it is irretrievably lost, no rights capable of being rendered effective will be sacrificed; of course, no obligation to making a recompense will exist.

But the truth is, the present bill, so far from surrendering the rights of individuals, puts things in the only train in which they will ever have an opportunity of giving them validity. The third clause of the ninth article of the Confederation expressly declares that all controversies about the right of soil between the citizens of different States shall be decided by a federal court. The counsel for the petitioners tells us that *his clients* doubt the operation of this clause, but as he gives us no reason for the doubt, I shall only say that the terms of it appear to me clear and explicit.

I have no doubt that the petitioners would be entitled to a federal court; and though that court would not decide in such a question like the tribunals of New York, but upon general principles of natural and political rights, I should confidently expect that all equitable claims of our citizens would have their full effect.

It is, however, further observed on this head, that the expense of such court would exceed the abilities of individuals, and could only be compassed by the resources of sovereign States.

If this suggestion should be admitted to be true (though I think the expense is greatly overrated), yet surely it would be more reasonable to ask the State for its assistance in procuring a federal court to obtain justice to the petitioners, than to ask it to undertake a ruinous war for that purpose. The difference in expense would not bear a comparison. Indeed, the first would be a trifling object to the State, while the last would exceed its abilities, and perhaps end in its disgrace.

But if the bill even contained no provision for obtaining justice to the petitioners, I should hold that the State would not be under a strict obligation to recompense them for their losses. The distinction I would lay down upon the subject is this: If a government voluntarily bargains away the rights, or disposes of the property, of its citizens, in their enjoyment, possession, or power, it is bound to make compensation for the thing of which it hath deprived them; but if they are actually dispossessed of those rights, or that property, by the casualties of war, or a revolution, the State, if the public good requires it, may abandon them to the loss without being obliged to make reparation. The author quoted by the counsel for the petitioners, has in view the case of a voluntary disposition of the property of citizens in the power of the State; and his doctrine is unquestionably just, but it does not apply to the case of an actual dispossession by any of those events in which nations have no choice. In wars between States, the sovereign is never supposed to be bound to make good the losses which the subject sustains by the captures or ravages of the enemy, though they should amount to the destruction of his whole property; and yet nothing can be more agreeable to natural equity than that those who happen to be the unlucky victims of the war should be indemnified by the community. But, in practice, such a principle would be found attended with endless difficulties and inconveniences; and therefore the reverse of it has been adopted as a general rule. The individual sufferer, however, might with great color of

justice, say to the government, Why did you make peace without stipulating a reparation for the damage done to your citizens? If it was necessary for the public good to sacrifice my interests, I have a right to a public compensation for my losses.

Though this case may, upon a superficial view, appear dissimilar to the one under consideration, yet the principle upon examination will be found as applicable to the one as to the other. The true reason is that the resources of nations are not adequate to the reparation of such extensive losses as those which are commonly occasioned by wars and revolutions; and it would therefore be contrary to the general good of society to establish it as a rule, that there is a strict obligation to repay such losses. It is better that there should be individual sufferers than to admit a rule which would fetter the operations of government and distress the affairs of the community.

Generosity and policy may, in particular instances, dictate such compensation. Sometimes they have been made by nations, but much oftener omitted. The propriety of doing the one or the other must depend on circumstances in which the ability of the public will always be a primary consideration.

I think, sir, I have by this time gone through all the arguments that have been brought against the bill, and I hope satisfactorily refuted them.

I shall say a little in answer to the observations drawn from the examples of Roman magnanimity. Neither the manners nor the genius of Rome are suited to the republic or to the age we live in. All her maxims and habits were military; her government

was constituted for war. Ours is unfit for it; and our situation, still less than our Constitution, invites us to emulate the conduct of Rome, or to attempt a display of unprofitable heroism.

One more observation will conclude what I have to say. The present situation of our national affairs appears to me peculiarly critical. I know not what may be the result of the disordered state of our government. I am, therefore, the more solicitous to guard against danger from abroad. Gentlemen who view our public affairs in the same light in which they present themselves to my mind, will, I trust, vote with me upon the present occasion. Those, on the contrary, who think all is well—who suppose our government is full of energy, our credit high, and trade and finances flourishing—will probably see no room for any anxiety about the matter, and may be disposed to leave Vermont in its present state. If the bill should fail, I hope they will never have occasion to regret the opportunity they have lost.

As to the petitioners, I shall only say that I have no reason to doubt the purity of the motives with which they are actuated. With many of them I am too well acquainted to permit me to entertain any unfavorable impression of their conduct; but, however their opinion of their own rights or interests may have misled them in estimating the merits of the question before the committee, I trust we shall be cautious how we suffer our judgment of a national question to be biassed or misguided by the speciousness of the arguments or appearances on which their opposition is supported.

EULOGIUM ON MAJOR-GENERAL GREENE

Delivered before the Society of the Cincinnati

July 4, 1789.

There is no duty that could have been assigned to me by this Society which I should execute with greater alacrity than the one I am now called upon to perform. All the motives capable of interesting an ingenuous and feeling mind conspire to prompt me to its execution. To commemorate the talents, virtues, and exploits of great and good men, is at all times a pleasing task to those who know how to esteem them. But when such men, to the title of superior merit, join that of having been the defenders and guardians of our country; when they have been connected with us as companions in the same dangers, sufferings, misfortunes, and triumphs; when they have been allied to us in the still more endearing character of friends, we recall the ideas of their worth with sensations that affect us yet more nearly, and feel an involuntary propensity to consider their fame as our own. We seem to appropriate to ourselves the good they have done, to take a personal interest in the glory they have acquired, and to share in the very praise we bestow.

In entering upon a subject in which your feelings as well as my own are so deeply concerned, however it might become me to follow examples of humility, I shall refrain from a practice perhaps not less laudable than it is common. I cannot prevail upon myself to check the current of your sensibility by the cold formalities of an apology for the defects of the speaker. These can neither be concealed nor

extenuated by the affectation of diffidence, nor even by the genuine concessions of conscious inability. 'T is your command, and the reverence we all bear to the memory of him of whom I am to speak, that must constitute my excuse, and my claim to your indulgence. Did I even possess the powers of oratory, I should with reluctance attempt to employ them upon the present occasion. The native brilliancy of the diamond needs not the polish of art; the conspicuous features of pre-eminent merit need not the coloring pencil of imagination, nor the florid decorations of rhetoric.

From you who knew and loved him, I fear not the imputation of flattery, or enthusiasm, when I indulge an expectation, that the *name* of GREENE will at once awaken in your minds the images of whatever is noble and estimable in human nature. The fidelity of the portrait I shall draw will therefore have nothing to apprehend from your sentence. But I dare not hope that it will meet with equal justice from all others, or that it will entirely escape the cavils of ignorance and the shafts of envy. For high as this great man stood in the estimation of his country, the whole extent of his worth was little known. The situations in which he has appeared, though such as would have measured the faculties and exhausted the resources of men who might justly challenge the epithet of great, were yet incompetent to the full display of those various, rare, and exalted endowments with which nature only now and then decorates a favorite, as if with intention to astonish mankind.

As a man, the virtues of Greene are admitted; as a patriot, he holds a place in the foremost rank; as a statesman, he is praised; as a soldier, he is admired. But in the two last characters, especially in the last but one, his reputation falls far below his desert. It required a longer life, and still greater opportunities, to have enabled him to exhibit, in full day, the vast, I had almost said the enormous, powers of his mind.

The termination of the American war—not too soon for his wishes, nor for the welfare of his country, but too soon for his glory—put an end to his military career. The sudden termination of his life cut him off from those scenes which the progress of a new, immense, and unsettled empire could not fail to open to the complete exertion of that universal and pervading genius which qualified him not less for the senate than for the field.

In forming our estimate, nevertheless, of his character, we are not left to supposition and conjecture. We are not left to vague indications or uncertain appearances, which partiality might varnish or prejudice discolor. We have a succession of deeds, as glorious as they are unequivocal, to attest his greatness and perpetuate the honors of his name.

It is an observation, as just as it is common, that in those great revolutions which occasionally convulse society, human nature never fails to be brought forward in its brightest as well as in its blackest colors; and it has very properly been ranked not among the least of the advantages which compensate for the evils they produce that they serve to

bring to light, talents and virtues, which might otherwise have languished in obscurity, or only shot forth a few scattered and wandering rays.

NATHANIEL GREENE, descended from reputable parents, but not placed by birth in that elevated rank which, under a monarchy, is the only sure road to those employments that give activity and scope to abilities, must, in all probability, have contented himself with the humble lot of a private citizen, or, at most, with the contracted sphere of an elective office, in a colonial and dependent government, scarcely conscious of the resources of his own mind, had not the violated rights of his country called him to act a part on a more splendid and more ample theatre.

Happily for America, he hesitated not to obey the call. The vigor of his genius, corresponding with the importance of the prize to be contended for, overcame the natural moderation of his temper; and though not hurried on by enthusiasm, but animated by an enlightened sense of the value of free government, he cheerfully resolved to stake his fortune, his hopes, his life, and his honor upon an enterprise, of the danger of which he knew the whole magnitude; in a cause, which was worthy of the toils and of the blood of heroes.

The sword having been appealed to, at Lexington, as the arbiter of the controversy between Great Britain and America, Greene, shortly after, marched, at the head of a regiment, to join the American forces at Cambridge; determined to abide the awful decision.

He was not long there before the discerning eye of the American Fabius marked him out as the object of his confidence.

His abilities entitled him to a pre-eminent share in the councils of his Chief. He gained it, and he preserved it, amidst all the *checkered varieties* of military vicissitude, and in defiance of all the intrigues of jealous and aspiring rivals.

As long as the measures which conducted us safely through the first most critical stages of the war shall be remembered with approbation; as long as the enterprises of Trenton and Princeton shall be regarded as the dawnings of that bright day which afterwards broke forth with such resplendent lustre; as long as the almost *magic operations* of the remainder of that memorable winter, distinguished not more by these events than by the extraordinary spectacle of a powerful army straitened within narrow limits by the phantom of a military force, and never permitted to transgress those limits with impunity, in which skill supplied the place of means, and disposition was the substitute for an army—as long, I say, as these operations shall continue to be the objects of curiosity and wonder, so long ought the name of Greene to be revered by a grateful country. To attribute to him a portion of the praise which is due, as well to the formation as to the execution of the plans that effected these important ends, can be no derogation from that wisdom and magnanimity which knew how to select and embrace counsels worthy of being pursued.

The laurels of a Henry were never tarnished by

the obligations he owed and acknowledged to a Sully.

It would be an unpleasing task, and therefore I forbear to lift the veil from off those impotent councils, which, by a formal vote, had decreed an undisturbed passage to an enemy returning from the fairest fruits of his victories, to seek an asylum from impending danger, disheartened by retreat, dispirited by desertion, broken by fatigue, retiring through woods, defiles, morasses, in which his discipline was useless, in the face of an army superior in numbers, elated by pursuit, and ardent to signalize their courage. 'T is enough for the honor of Greene to say, that he left nothing unessayed to avert and to frustrate so degrading a resolution. And it was happy for America, that the man, whose reputation could not be wounded without wounding the cause of his country, had the noble fortitude to rescue himself, and the army he commanded, from the disgrace with which they were both menaced by the characteristic imbecility of a council of war.

Unwilling to do more than merely to glance at a scene in which the meritorious might be involved with the guilty, in promiscuous censure, here let me drop the curtain, and invite you to accompany me to the Heights of Monmouth. There let me recall to your indignant view, the flower of the American infantry flying before an enemy that scarcely dared to pursue—vanquished without a blow—vanquished by their obedience to the commands of a leader who meditated their disgrace. Let me contrast with this the conduct of your Greene; the calm intrepidity

and unshaken presence of mind with which he seconded the dispositions of his General, to arrest the progress of the disorder and retrieve the fortune of the day. Let me recall to your recollection that well-timed and happy movement on the left of the enemy, by which he so materially contributed to deciding the dubious event of the conflict, and turning the hesitating scale of victory.

From the Heights of Monmouth I might lead you to the Plains of Springfield, there to behold the veteran Knyphausen, at the head of a veteran army, baffled and almost beaten by a general without an army—aided, or rather embarrassed, by small fugitive bodies of volunteer militia, the mimicry of soldiership!

But it would ill become me to detain you in the contemplation of objects diminutive in comparison with those that are to succeed.

Hitherto, we have seen the illustrious Greene acting in a subordinate capacity, the faint glimmerings of his fame absorbed and lost in the superior rays of a Washington. Happy was it for him to have been called to a more explicit station. Had this never been the case, the future historian, perplexed between the panegyric of friends and the satire of enemies, might have doubted in what colors to draw his true character. Accident, alone, saved a Greene from so equivocal a fate; a reflection which might damp the noble ardor of emulation, and check the towering flight of conscious merit.

The defeat of Camden, and the misfortune of Gates, opened the career of victory and of glory to Greene. Congress having resolved upon a successor

to the former, the choice was left to the Commander-in-Chief, and fell upon the latter. In this destination, honorable in proportion as it was critical, he acquiesced with the mingled emotions of a great mind—impelled by a sense of duty—allured by the hope of fame—apprised of the danger and precariousness of the situation, yet confident of its own strength, and animated by the magnitude of the object for which it was to be exerted.

Henceforth we are to view him on a more exalted eminence. He is no longer to figure in an ambiguous or secondary light; he is to shine forth the artificer of his own glory—the leader of armies and the deliverer of States!

To estimate properly the value of his services, it is necessary to recur to the situation of the southern extremity of the Union at the time he entered upon the command in that quarter. Georgia and South Carolina subdued and overrun; the spirit of their people dejected and intimidated; the flame of resistance scarcely kept alive by the transient gleams of a few expiring embers; North Carolina distracted by the still recent effects of internal commotion, dreading the hostility of a considerable part of its own citizens, and depending, for its exertions, on the tried valor and patriotism of the rest, more than on the energy of a feeble and ill-organized government; Virginia, debilitated by the excessive efforts of its early zeal, and by the dissipation of its revenues and forces, in Indian hostilities, in domestic projects, encumbered by a numerous body of slaves, bound by all the laws of degraded humanity to hate their

masters; deficient in order and vigor in its administration, and relying wholly, for immediate defence against threatened invasion, on the resources of a country, extensive, populous, and fertile, to be put in motion by the same ardent and magnanimous spirit which first lighted up the opposition to Great Britain, and set the glorious example of resistance to America. In such a situation what was to be hoped? What was to be hoped from a general without troops, without magazines, without money? A man of less depth of penetration or force of soul than Greene, would have recoiled at the prospect; but he, far from desponding, undertook the arduous task with firmness — with a firmness which was the result of a well-informed estimate of a situation perilous but not desperate. He knew how much was to be expected from the efforts of men contending for the rights of man. He knew how much was to be performed by capacity, courage, and perseverance.

Not to be disconcerted by the most complicated embarrassments, nor the most discouraging prospects, he began, before he entered upon the duties of the field, by adjusting the outlines of the plan which was to regulate his future conduct; a plan conceived with as much wisdom, and so perfect a judgment of circumstances, that he never had occasion to depart from it in the progress of his subsequent operations. This alone might suffice to form the eulogium of his genius, and to demonstrate that he was an accomplished master in the science of military command.

His next care was to endeavor to impress the

neighboring States with a proper sense of their situation, in order to induce them, with system and effect, to furnish the succors of which he stood in need. To urge the collection and accelerate the arrival of these, as well as to repel any invasion to which the State might be exposed, he stationed, in Virginia, the Baron de Steuben, an officer who merited and justified his confidence; and having made these preliminary arrangements, he hastened to put himself at the head of the inconsiderable remains of the southern army, which he joined at Charlotte, on the borders of North Carolina, destitute of every thing but courage, and an unconquerable attachment to the cause they had espoused.

To enter into a particular detail of the operations by which the Southern States were rescued from conquest and desolation, and the last project of Britain for the subjugation of America frustrated, would be to assume the province of the historian. This, neither the occasion, nor any reasonable claim to your indulgence, would justify. A general sketch is all that can, with propriety, be attempted, and shall limit my endeavors. To supply a necessitous army by coercion, and yet maintain the confidence and good-will of the coerced; this was among the first and not the least of the difficulties to be surmounted. But delicate and difficult as was the task, it was, nevertheless, accomplished. Conducted with system, moderation, and equity, even *military exactions* lost their rigor, and freemen venerated the hand that reluctantly stripped them of their property for their preservation.

Having concerted the arrangements requisite to this end, Greene, without further delay, entered upon that busy, complicated, and extraordinary scene, which may truly be said to form a phenomenon in war—a scene which almost continually presents us, on the one hand, with victories ruinous to the victors; on the other, with retreats beneficial to the vanquished; which exhibits to our admiration a commander almost constantly obliged to relinquish the field to his adversary, yet as constantly making acquisitions upon him; beaten to-day; to-morrow, without a blow, compelling the conqueror to renounce the very object for which he had conquered, and, in a manner, to fly from the very foe he had subdued. Too weak, with his collected strength, to dispute the field with an enemy superior both in numbers and discipline, and urged by the necessity of giving activity to the natural force of the country, by rousing the inhabitants from the state of despondency into which they had sunk, with the prospect of succor and protection, Greene divided his little army into two parts: one of which he sent, under Morgan, into the western extremities of North Carolina; and, with the other, marched to Hicks' Creek.

This movement had the desired effect. The appearance of aid, magnified by advantages opportunely gained (though unimportant in themselves), rekindled the ardor of patriotic hope in the breasts of many who had begun to despair, and emboldened them to resume their arms, and again to repair to the standard of liberty.

Sensible of the importance of counteracting this

policy of the American general, the British commander hesitated not about the part he should act. Directing his first attention towards the detachment under Morgan, and meditating a decisive blow against that corps, he committed the execution of the enterprise to Lieutenant-Colonel Tarleton, at the head of a thousand veterans. Tarleton, hitherto not less the favorite of fortune than of his chief, hastened to perform the welcome duty; anticipating an easy triumph over foes inferior both in numbers and discipline; and dreaming not of the reverse which was destined to confound his hopes, and even to sully the lustre of his former fame. In the very grasp of victory, when not to combat but to slaughter seemed all that remained to be done, the forward intrepidity of a Washington, seconded by the cool, determined bravery of a Howard, snatched the trophy from his too eager and too exulting hand. He was discomfited and routed. The greater part of his followers were either killed or taken; and the remaining few, with himself, were glad to find safety in flight.

Here first the bright dawn of prosperity began to dispel that gloomy cloud which had for some time lowered over the Southern horizon! Thunderstruck at so unexpected a disaster, and ill able to spare so considerable a part of his force, Cornwallis resolved, at every sacrifice, to attempt the recovery of his captive troops. The trial of skilful exertion between the generals and of patient fortitude between the troops, to which that attempt gave occasion, was such as to render it difficult to pronounce to whom the palm of merit ought to be decreed. Abandoning

whatever might impede the celerity of his motions, Cornwallis began and urged the pursuit of the detachment under Morgan, with a rapidity seldom equalled, never surpassed; while, on the other hand, the provident and active Greene spared no exertion to disappoint his enterprising adversary.

Anxious for the security of that detachment, with their prisoners, and desirous of affecting a reunion of his forces, now rendered necessary by a change of circumstances, he gave instant orders for the march of the body under his immediate command to Guilford Court-House; and hastened, in person, through the country, a hundred and fifty miles, to join General Morgan, whom he came up with on the banks of the Catawba. Thus, placed in front of the enemy, he was the better able to counteract their immediate design, and to direct the co-operation necessary to the intended junction. So well were his measures taken, that he succeeded in both objects. The prisoners were carried off in safety; and Guilford Court-House, the destined place of rendezvous, received and reunited the two divisions of the American army. Still, however, too weak to keep the field in the face of his enemy, a further retreat became inevitable. A resolution was accordingly taken to retire beyond the Dan. Here a new and not less arduous trial of skill ensued. To get between the American army and Virginia, intercept their supplies and reinforcements, and oblige them to fight on disadvantageous terms—this now became the object of Cornwallis. With this view he directed his march into the upper country, where the rivers

were fordable with facility; flattering himself that the depth of the waters below, and the want of boats, would oppose insuperable obstacles to the expeditious passage of the American troops. To retard the progress of the British army was, of course, an indispensable policy on the part of Greene. For this purpose, he practised every expedient which a mind, fertile in resource, could devise. And so efficacious were the expedients he adopted, that, surmounting all the impediments in his way, he completed his retreat across the Dan, without loss of men, baggage, or stores.

Such, nevertheless, was the energy of the pursuit, that in crossing the three principal rivers, the Catawba, the Yadkin, and the Dan, the British troops, in a manner, trod upon the heels of the American. In the passage of the last of the three, the van of the enemy's army reached one shore, almost at the very moment that the rear of ours landed on the opposite.

Cornwallis, upon this occasion, imitating Charles the Twelfth of Sweden, when the celebrated Schulenburgh made good his retreat across the Oder, in spite of the utmost efforts of that vigorous and enterprising monarch, might, with propriety, have exclaimed, This day, at least, Greene has conquered me! The art of retreating is perhaps the most difficult in the art of war. To have effected a retreat in the face of so ardent a pursuit, through so great an extent of country; through a country offering every obstacle, affording scarcely any resource; with troops destitute of every thing, who a great part of the way left the vestiges of their march in their own blood;

—to have done all this, I say, without loss of any kind may, without exaggeration, be denominated a masterpiece of military skill and exertion. Disappointed at his first aim, Cornwallis now retired from the Dan to Guilford Court-House. Having driven the American army out of North Carolina, he flattered himself that his efforts would at least be productive of the advantage of an accession of force, by encouraging the numerous royalists of that State to repair to his standard. Greene, not without apprehensions that the hopes of his competitor, in this respect, might be realized, lost not a moment, after receiving a small reinforcement from Virginia, in recrossing the Dan, to take post in the vicinity of the British army, and interrupt their communication with the country. Three weeks passed in a constant scene of military manœuvre: Cornwallis, equally striving to bring his antagonist to an action; and Greene, adroitly endeavoring to elude it, yet without renouncing such a position as would enable him to prevent both supplies and reinforcements. On this occasion he played the part of Turenne; and he played it with complete success. The relative position which he took and maintained, and the tragical fate of a body of royalists, intercepted in their way to the British army, destroyed every prospect of that aid which they, not without reason, had promised themselves from their adherents in North Carolina.

Virginia, in the meantime, awakened by the presence of danger, exerted herself to reinforce the American army. Greene, speedily finding himself in a

condition to outnumber his adversary, resolved to offer that battle which he had hitherto declined. He considered that, in the existing circumstances, a defeat must be, to the enemy, absolute ruin; while to him, from his superiority in cavalry, united with other advantages, it could be nothing more than a partial misfortune, and must be compensated at a price which the enemy could not afford to pay for it.

The two armies, now equally willing to try the fortune of a battle, met and engaged near Guilford Court-House. All that could be expected from able disposition towards insuring success, promised a favorable issue to the American arms. But superior discipline carried it against superior numbers and superior skill. Victory decreed the glory of the combat to the Britons; but Heaven, confirming the hopes of Greene, decreed the advantage of it to the Americans. Greene retired; Cornwallis kept the field. But Greene retired only three miles; and Cornwallis, in three days, abandoning the place where the laurels he had gained were a slender compensation for the loss he had suffered, withdrew to Wilmington on the sea-coast.

This victory cost him a large proportion of the flower of his army; and it cost him a Webster.

Here occurred the problem, on the right solution of which depended the fame of Greene and the fate of the Southern States. There was every probability that the next movement of Cornwallis would be towards a junction with Arnold for the invasion of Virginia. Was the American general to keep pace with his adversary in his northern career, in

order to resist his future enterprises? Or, was he to return into the field he had lately left, to endeavor to regain what had been there lost? The first, as the most obvious, and, in a personal light, the least perilous course, would have been thought the most eligible by an ordinary mind. But the last, as the wisest, though, to his own reputation, the most hazardous, appeared preferable to the comprehensive eye and adventurous spirit of a Greene.

On the one hand, he concluded, justly, that Virginia might safely be trusted to her own strength and resources, and to the aid which, if necessary, she might derive from the North, against all the force which the enemy were then able to employ in that quarter. On the other hand, he foresaw, that if South Carolina and Georgia should be abandoned to the situation in which they then were, they would quickly have abandoned themselves to despair; would have lost even the spirit of opposition; and might have been rendered, in several respects, subservient to the future progress of their conqueror. Under these impressions, he determined to return into South Carolina, to attempt the recovery of that and its neighboring State.

This was one of those strokes that denote superior genius, and constitute the sublime of war. 'T was Scipio leaving Hannibal in Italy, to overcome him at Carthage!

The success was answerable to the judicious boldness of the design. The enemy were divested of their acquisitions in South Carolina and Georgia, with a rapidity which, if not ascertained, would

scarcely be credible. In the short space of two months, all their posts in the interior of the country were reduced. The perseverance, courage, enterprise, and resource, displayed by the American general in the course of these events, commanded the admiration even of his enemies. In vain was he defeated in one mode of obtaining his object: another was instantly substituted that answered the end. In vain was he repulsed from before a besieged fortress: he immediately found other means of compelling its defenders to relinquish their stronghold. Where force failed, address and stratagem still won the prize.

Having deprived the enemy of all their posts in the interior of the country, and having wasted their forces in a variety of ways, Greene now thought himself in a condition to aim a decisive blow at the mutilated remains of the British army, and, at least, to oblige them to take refuge within the lines of Charleston. With this view he collected his forces into one body, and marched to give battle to the enemy, then stationed at the Springs of the Eutaw.

A general action took place. Animated, obstinate, and bloody was the contest. The front line of the American army, consisting of militia, after beginning a brisk attack, began to give way. At this critical and inauspicious juncture, Greene, with that collected intrepidity which never forsook him, gave orders to the second line, composed of Continentals, to advance to the charge with trailed arms. This order, enforced by example and executed with matchless composure and constancy, could not fail

of success. The British veterans shrunk from the American bayonet. They were routed and pursued a considerable distance. Numbers of them fell into the hands of their pursuers, and the remainder were threatened with a similar fate; when, arriving at a position which, with peculiar advantages, invited to a fresh stand, they rallied and renewed the action. In vain did the intrepid Washington, at the head of the pursuing detachment, redouble the efforts of his valor, to dislodge them from this new station. He was himself wounded and made a prisoner, and his followers, in their turn, compelled to retire.

But though the enemy, by an exertion of bravery which demands our esteem, saved themselves from the total ruin which was ready to overwhelm them, they had, nevertheless, received too severe a blow to attempt any longer to maintain a footing in the open country. They, accordingly, the day following, retreated towards Charleston, leaving behind them their wounded and a considerable quantity of arms. Here ended all serious offensive operations in the South! The predatory excursions which intervened between the battle of the Eutaw and the evacuation of Charleston and Savannah, deserve not a place in the catalogue of military achievements. But before we take leave of a scene as honorable as it was advantageous to the American arms, it behooves us to stop for a moment, to pay the tribute of merited applause to the memory of that gallant officer, who, at the head of the Virginia line, fell in this memorable conflict. More anxious, to the last, about his country than himself, in the very agonies of departing

life, he eagerly inquired which of the contending parties prevailed; and having learned that his countrymen were victorious, he, like another Epaminondas, yielded up his last breath in this noble exclamation: "*Then do I die contented.*" Heroic Campbell! How enviable was such a death!

The evacuation of the two capitals of South Carolina and Georgia entirely restored those States to their own governments and laws. They now hailed the illustrious Greene as their defender and deliverer. Their gratitude was proportioned to the extent of the benefits resulting from his services; nor did it show itself in words only, but was manifested by acts that did honor to their generosity. Consecrated in the affections of their citizens to the remotest posterity, the fame of Greene will ever find in them a more durable, as well as a more flattering, memorial, than in the proudest monuments of marble or brass.

But where, alas, is now this consummate General; this brave Soldier; this discerning Statesman; this steady Patriot; this virtuous Citizen; this amiable Man? Why could not so many talents, so many virtues, so many bright and useful qualities, shield him from a premature grave? Why was he not longer spared to a country he so dearly loved; which he was so well able to serve; which still seems so much to stand in need of his services? Why was he only allowed to assist in laying the foundation, and not permitted to aid in rearing the superstructure, of American greatness? Such are the inquiries which our friendly, yet short-sighted, regrets would

naturally suggest. But inquiries like these are to be discarded as presumptuous. 'T is not for us to scan, but to submit, to the dispensations of Heaven.

Let us content ourselves with revering the memory, imitating the virtues, and, as far as we dare, emulating the glory of the man, whom neither our warmest admiration, nor our fondest predilection, could protect from the fatal shaft. And as often as we indulge our sorrow for his loss, let us not fail to mingle the reflection, that he has left behind him, offspring who are the heirs to the friendship which we bore to the father, and who have a claim from many, if not from all of us, to cares not less than parental.

PRESIDENTIAL ETIQUETTE

HAMILTON TO WASHINGTON

NEW YORK, May 5, 1789.

SIR:

In conformity to the intimation you were pleased to honor me with on * * * evening last, I have reflected upon the etiquette proper to be observed by the President, and now submit the ideas which have occurred to me on the subject.

The public good requires as a primary object, that the dignity of the office should be supported.

Whatever is essential to this ought to be pursued, though at the risk of partial or momentary dissatisfaction. But care will be necessary to avoid extensive disgust or discontent. Men's minds are

prepared for a pretty high tone in the demeanor of the Executive, but I doubt whether for so high a one as in the abstract might be desirable. The notions of equality are yet, in my opinion, too general and too strong to admit of such a distance being placed between the President and other branches of the government as might even be consistent with a due proportion. The following plan will, I think, steer clear of extremes, and involve no very material inconveniences.

I. The President to have a levee day once a week for receiving visits; an hour to be fixed at which it shall be understood that he will appear, and consequently that the visitors are to be previously assembled.

The President to remain half an hour, in which time he may converse cursorily on indifferent subjects, with such persons as shall invite his attention, and at the end of that half hour disappear. Some regulation will be hereafter necessary to designate those who may visit.

A mode of introduction through particular officers will be indispensable. No visits to be returned.

II. The President to accept no invitations, and to give formal entertainments only twice or four times a year, the anniversaries of important events in the Revolution. If twice, the day of the declaration of independence, and that of the inauguration of the President, which completed the organization of the Constitution, to be preferred; if four times, the day of the treaty of alliance with France, and that of the definitive treaty with Britain to be added. The

members of the two Houses of the Legislature, principal officers of the government, foreign ministers and other distinguished strangers only to be invited. The numbers form in my mind an objection; but there may be separate tables in separate rooms. This is practised in some European courts. I see no other method in which foreign ministers can, with propriety, be included in any attentions of the table which the President may think fit to pay.

III. The President, on the levee days, either by himself or some gentleman of his household, to give informal invitations to family dinners on the days of invitation. Not more than six or eight to be invited at a time, and the matter to be confined essentially to members of the Legislature and other official characters. The President never to remain long at table.

I think it probable that the last article will not correspond with the ideas of most of those with whom your Excellency may converse; but on pretty mature reflection, I believe it will be necessary to remove the idea of too immense an inequality, which I fear would excite dissatisfaction and cabal. The thing may be so managed as neither to occasion much waste of time nor to infringe on dignity.

It is an important point to consider what persons may have access to your Excellency on business. The heads of departments will, of course, have this privilege. Foreign ministers of some descriptions will also be entitled to it. In Europe, I am informed, ambassadors only have direct access to the chief magistrate. Something very near what prevails

there would, in my opinion, be right. The distinction of rank between diplomatic characters requires attention, and the door of access ought not to be too wide to that class of persons. I have thought that the members of the Senate should also have a right of *individual* access on matters relative to the *public administration*. In England and France, peers of the realm have this right. We have none such in this country, but I believe that it will be satisfactory to the people to know that there is some body of men in the state who have a right of continual communication with the President. It will be considered a safeguard against secret combinations to deceive him.

I have also asked myself, Will not the Representatives expect the same privilege, and be offended if they are not allowed to participate with the Senate? There is sufficient danger of this to merit consideration. But there is reason for the distinction in the Constitution. The Senate are coupled with the President in certain executive functions, treaties, and appointments. This makes them in a degree his constitutional counsellors, and gives them a *peculiar* claim to the right of access. On the whole, I think the discrimination will be proper and may be hazarded.

I have chosen this method of communication because I understood your Excellency that it would be most convenient to you. The unstudied and unceremonious manner of it will, I hope, not render it the less acceptable. And if, in the execution of your commands, at any time I consult frankness and

simplicity more than ceremony or profession, I flatter myself you will not on that account distrust the sincerity of my cordial wishes for your personal happiness, and the success of your administration.

I have the honor to be, with the highest respect, Your Excellency's most obedient and humble servant.

WASHINGTON TO HAMILTON

NEW YORK, May 5, 1789.

DEAR SIR:

I beg you to accept my unfeigned thanks for your friendly communication of this date, and that you will permit me to entreat a continuation of them as occasion may arise.

The manner chosen for doing it is most agreeable to me. It is my wish to act right; if I err, the head and not the heart shall, with *justice*, be chargeable.

With sentiments of sincere esteem and regard,

I am, dear sir, your obed't serv't,

GEO. WASHINGTON.

PUBLIC LANDS

REPORT OF A UNIFORM SYSTEM FOR THE DISPOSITION OF THE LANDS, THE PROPERTY OF THE UNITED STATES

Communicated to the House of Representatives, July 22, 1790.

That on the formation of a plan for the disposition of the vacant lands of the United States, there appear to be two leading objects of consideration: one,

the facility of advantageous sale according to the probable course of purchases; the other, the accommodation of individuals now inhabiting the western country, or who may hereafter emigrate thither.

The former, as an operation of finance, claims primary attention; the latter is important, as it relates to the satisfaction of the inhabitants of the western country. It is desirable, and it does not appear impracticable, to conciliate both.

Purchasers may be contemplated in three classes: moneyed individuals and companies, who will buy to sell again; associations of persons who intend to make settlements themselves; single persons or families now resident in the western country, or who may emigrate thither hereafter. The two first will be frequently blended, and will always want considerable tracts. The last will generally purchase small quantities. Hence a plan for the sale of the western lands, while it may have due regard for the last, should be calculated to obtain all the advantages which may be derived from the two first classes. For this reason it seems requisite that the general land-office should be established at the seat of government. 'T is there that the principal purchasers, whether citizens or foreigners, can most easily find proper agents, and that contracts for large purchases can be best adjusted.

But the accommodation of the present inhabitants of the western territory, and of unassociated persons and families who may emigrate thither, seems to require that one office, subordinate to that at the seat of Congress, should be opened in the north-

western, and another in the southwestern government.

Each of these offices, as well the general one as the subordinate ones, it is conceived, may be placed with convenience under the superintendence of three commissioners, who may either be pre-established officers of government, to whom the duty may be assigned by law, or persons specially appointed for the purpose. The former is recommended by considerations of economy, and it is probable would embrace every advantage which could be derived from a special appointment.

To obviate those inconveniences, and to facilitate and insure the attainment of those advantages, which may arise from new and casual circumstances, springing up from foreign and domestic causes, appear to be objects for which adequate provisions should be made in any plan that may be adopted. For this reason, and from the intrinsic difficulty of regulating the details of a specific provision for the various objects which require to be consulted, so as neither to do too much nor too little for either, it is respectfully submitted, whether it would not be advisable to vest a considerable latitude of discretion in the commissioners of the general land-office, subject to some such regulations and limitations as follows, viz.:

That no land shall be sold, except such in respect to which the titles of the Indian tribes shall have been previously extinguished.

That a sufficient tract or tracts shall be reserved and set apart for satisfying the subscribers to the

proposed loan in the public debt; but that no location shall be for less than five hundred acres.

That convenient tracts shall from time to time be set apart for the purpose of locations by actual settlers, in quantities not exceeding to one person one hundred acres.

That other tracts shall from time to time be set apart for sales in townships of ten miles square, except where they shall adjoin upon a boundary of some prior grant, or of a tract so set apart, in which cases there shall be no greater departure from such form of location than may be absolutely necessary.

That any quantities may nevertheless be sold by special contract, comprehended either within natural boundaries or lines, or both.

That the price shall be thirty cents per acre, to be paid either in gold or silver, or in public securities, computing those which shall bear an immediate interest of six per cent. as at par with gold and silver; and those which shall bear a future or less interest, if any there shall be, at a proportional value.

The certificates issued for land upon the proposed loan shall operate as warrants within the tract or tracts which shall be specially set apart for satisfying the subscribers thereto, and shall also be receivable in all payments whatsoever for land, by way of discount, acre for acre.

That no credit shall be given for any quantity less than a township of ten miles square, nor more than two years' credit for any greater quantity.

That in every instance of credit, at least one quarter part of the consideration shall be paid down,

and security, other than the land itself, shall be required for the residue. And that no title shall be given for any tract, or part of a purchase, beyond the quantity for which the consideration shall be actually paid.

That the residue of the tract or tracts, set apart for the subscribers to the proposed loan, which shall not have been located within two years after the same shall have been set apart, may then be sold on the same terms as any other land.

That the commissioners of each subordinate office shall have the management of all sales, and the issuing of warrants for all locations, in the tracts to be set apart for the accommodation of individual settlers, subject to the superintendency of the commissioners of the general land-office, who may also commit to them the management of any other sales or locations which it may be found expedient to place under their direction.

That there shall be a surveyor-general, who shall have power to appoint a deputy surveyor-general in each of the western governments, and a competent number of deputy surveyors to execute in person all warrants to them directed by the surveyor-general, or deputy surveyor-generals, within certain districts to be assigned to them respectively. That the surveyor-general shall also have in charge all the duties committed to the geographer-general by the several resolutions and ordinances of Congress.

That all warrants issued at the general land-office shall be signed by the commissioners, or such one of them as they may nominate for that purpose, and shall be directed to the surveyor-general. That all

warrants issued at a subordinate office, shall be signed by the commissioners of such office, or by such one of them as they may nominate for that purpose, and shall be directed to the deputy surveyor-general within the government. That the priority of locations upon warrants shall be determined by the times of the applications to the deputy surveyors; and, in case of two applications for the same land at one time, the priority may be determined by lot.

That the treasurer of the United States shall be the receiver of all payments for sales at the general land-office, and may also receive deposits of money, or securities for purchases intended to be made at the subordinate offices, his receipts, or certificates for which, shall be received in payment at those offices.

That the secretary of each of the western governments shall be the receiver of all payments arising from sales at the office of such government.

That controversies concerning rights to patents, or grants of land, shall be determined by the commissioners of that office under whose immediate direction, or jurisdiction, the locations in respect to which they may arise shall have been made.

That the completion of all contracts, and sales heretofore made, shall be under the direction of the commissioners of the general land-office.

That the commissioners of the general land-office, surveyor-general, deputy surveyors-general, and the commissioners of the land-office in each of the western governments, shall not purchase, nor shall others purchase for them, in trust, any public lands.

That the secretaries of the western governments shall give security for the faithful execution of their duties as receivers of the land-office.

That all patents shall be signed by the President of the United States, or by the Vice-President, or other officer of government acting as President, and shall be recorded in the office either of the surveyor-general, or of the clerk of the Supreme Court of the United States.

That all surveys of land shall be at the expense of the purchasers or grantees.

That the fees shall not exceed certain rates, to be specified in the law, affording equitable compensations for the services of the surveyors, and establishing reasonable and customary charges for patents and other office papers, for the benefit of the United States.

That the commissioners of the general land-office shall, as soon as may be, from time to time, cause all the rules and regulations which they may establish to be published, in one gazette at least, in each State, and in each of the western governments where there is a gazette, for the information of the citizens of the United States.

Regulations like these will define and fix the most essential particulars which can regard the disposal of the western lands, and where they leave any thing to discretion, will indicate the general principles or policy intended by the Legislature to be observed, for a conformity to which the commissioners will of course be responsible. They will, at the same time, leave room for accommodating to circumstances

which cannot beforehand be accurately appreciated, and for varying the course of proceeding as experience shall suggest to be proper, and will avoid the danger of those obstructions and embarrassments in the execution, which would be to be apprehended from an endeavor at greater precision and more exact detail.

All which is humbly submitted.

ALEXANDER HAMILTON,
Secretary of the Treasury.

HEADS OF TOPICS FOR PRESIDENT'S SPEECH OF DECEMBER 8, 1790[1]

Draft by Hamilton, December 1, 1790.

I.—Confidence that measures for the further support of public credit, and for the payment of the interest and gradual extinguishment of the principal of the public debt, will be pursued with zeal and vigor; and that, as one means to this, a plan for the sale of the western lands will be adopted, which will give them the effect intended, appropriating them to the sinking fund, and which will extend the agriculture of the United States.

II.—Felicitation on the success of the measures hitherto adopted for the support of public credit, as witnessed by the rise of American stock, not only in the United States, but in Europe. The public credit cannot but acquire additional energy when it is known that the resources hitherto in activity have been more productive than was calculated upon. As proof not only of the resources of the

[1] Compare *Writings of Washington*, xii., p. 12.

country, but of the patriotism and honor of the mercantile and marine citizens of the United States, the punctuality of the former in discharging their obligations has been exemplary.

III.—Information that a loan of 300,000 florins has been effected in Holland, the terms and disposition of which (as far as any has been made) the Secretary of the Treasury has been directed to explain.

IV.—Growing conviction in the minds of the great body of the people of the utility and benefits of a National Government. It is not to be doubted that any symptoms of discontent which may have appeared in particular places, respecting particular measures, will be obviated by a removal of the misapprehensions which may have occasioned them.

V.—Communication of the expedition against the Indians, and of the motives to it.

VI.—Disturbed situation of Europe, particularly of the great maritime powers. The precautions of a prudent circumspection on the part of the United States ought not to be neglected.

VII.—Almost total interruption of our Mediterranean trade, from the dread of piratical depredations. Great importance of opening that trade, and expediency of considering whether protection cannot be afforded to it.

IX.—Symptoms of greater population than was supposed—a further proof of progressive strength and resource.

X.—Remarks on the abundance of the harvests, affording an assurance of internal plenty, and the means of easy payment for foreign supplies.

APPORTIONMENT OF REPRESENTATIVES

HAMILTON TO WASHINGTON [1]

PHILADELPHIA, April 4, 1792.

The Secretary of the Treasury presents his respects to the President of the United States. He was informed yesterday, by the Attorney-General, that his opinion concerning the constitutionality of the Representation Bill was desired this morning. He now sends it with his reasons, but more imperfectly stated than he could have wished, through want of time. He has never seen the bill, but from the accounts he has had of it, he takes it for granted that he cannot have misconceived its contents, so as to cause any material error in the process of his reasoning.

The President desires an opinion, whether the act entitled "An act for an apportionment of representatives among the several States, according to the first enumeration," be constitutional or not.

It is to be inferred, from the provisions of the act, that the following process has been pursued:

1. The aggregate numbers of the United States

[1] The first attempt to apportion representatives produced a long wrangle in Congress. Finally the Senate bill, fixing the number of representatives at one hundred and twenty, and giving representation to the larger fractions, passed. Washington before deciding asked for the written opinion of each member of his cabinet, which was divided. Jefferson and Randolph thought it clearly unconstitutional. Hamilton and Knox considered it constitutional. Washington vetoed the bill. Another act was then passed fixing simply the ratio of representation, and every ten years thereafter there was a wrangle. In 1850 we reverted to the Senate plan of fixing the number of representatives first, and that system has prevailed.

are divided by 30,000, which gives the total number of representatives, or 120.

2. This number is apportioned among the several States by the following rule: As the *aggregate* numbers of the *United States* are to the *total number* of representatives found as above, so are the *particular numbers of each State* to the number of representatives of such State. But,

3. As this second process leaves a residue of eight out of the 120 members unapportioned, these are distributed among those States which, upon that second process, have the largest fractions or remainders.

As a ratio of 30,000 appears to have been adopted as a guide, the question is, whether this ratio ought to have been applied, in the first instance, to the aggregate numbers of the United States, or to the particular numbers of each State?

I am of opinion that either of these courses might have been constitutionally pursued; or, in other words, that there is no criterion by which it can be pronounced decisively that the one or the other is the true construction. Cases so situated often arise on constitutions and laws.

The part of the Constitution in question is thus expressed: "*Representatives* and *direct taxes* shall be *apportioned* among the several States according to their *respective numbers.*"

'T is plain that the same rule is to be pursued with regard to *direct taxes* as with regard to *representatives.*

What is the process which would naturally be

followed in relation to the apportionment of direct taxes?

Clearly this—the *total sum* necessary would be first ascertained.

This total sum would then be *apportioned* among the several States by the following rule, viz.:

As the *aggregate* numbers of the United States are to the *whole sum* required, so are the *particular numbers of a particular State* to the proportion of such State; which is, so far, the exact process that has been followed by the bill in the apportionment of representatives.

And hence results a strong argument for its constitutionality.

If there had been no ratio mentioned in the Constitution, 't is evident that no other course could have been well pursued. No doubt, at least, of the propriety of that which has been pursued, could have been then entertained.

Does the mention of a ratio necessarily alter it?

The words of the Constitution, in respect to the ratio, are these: "The number of representatives shall not exceed one for every 30,000, but each State shall have at least one representative."

This provision may naturally be read and understood thus: "The whole number of the representatives of the United States shall not exceed one to every 30,000 of the aggregate numbers of the United States; but if it should happen that the proportion of the numbers of any State to the aggregate numbers of the United States should not give to such State one representative, such State shall, never-

theless, have *one*. No State shall be without a representative."

There is nothing in the form of expression to confine the application of the ratio to the *several* numbers of the States. The mode of expression equally permits its application to their *joint or aggregate numbers*. The intent of inserting it is merely to determine a proportional limit, which the number of the House of Representatives shall not exceed. This is as well satisfied by resorting to the collective, as to the separate, population of the respective States.

There is, therefore, nothing in the last recited clause to control or direct the sense of the first.

If it be said that the further process which apportions the residue among the States having the greatest remainders is the circumstance that renders the bill unconstitutional, because it renders the representation not *strictly* according *to the respective numbers* of the States, it may be answered that this is but a necessary consequence of the first principle.

As there would commonly be left, by the first process, an unapportioned residue of the total number to be apportioned, it is of necessity that that residue should be distributed among the several States by some rule, and none more equal or defensible can be found than that of giving a preference to the greatest remainders.

If this makes the apportionment not mathematically "according to the *respective numbers* of the several States," so neither would the opposite principle of construction.

Fractions, more or less great, would, in this case also, and in a greater degree, prevent a conformity of the proportion of representatives to numbers. The same objection would lie, in this respect, against both principles of construction, against that in the bill at least.

Upon the whole, then, the bill *apportions* the representatives among the several States, *according to their respective numbers;* so that the *number of representatives* does *not exceed* one for every 30,000 persons, *each State having at least one member.* It therefore performs every requisition of the Constitution; and it will not be denied that it performs this in the manner most consistent with *equality.*

There appears, therefore, no room to say that the bill is unconstitutional, though there may be another construction of which the Constitution is capable. In cases where two constructions may reasonably be adopted, and neither can be pronounced inconsistent with the public good, it seems proper that the legislative sense should prevail. The present appears to the Secretary clearly to be such a case.

INDIAN AFFAIRS

For the *Federal Gazette.*

Russell, under an affected moderation, veils the most insidious and malignant designs, and slyly propagates the basest slanders. This is evident from the following passage of his second paper.

After stating a visionary and impracticable scheme for avoiding a war with the Indians, he proceeds thus: "But, then, how many officers had been wanting, how *many* lucrative contracts would have been lost, and how great a waste of money would have been prevented from flowing into the coffers of those concerned in this business?"

The plain inference from this is, that the public officer who has an agency in making those contracts *shares in the profit of them*, and that a part of the money which is expended *flows into his coffers*. If this is not his meaning, then Russell owes it to himself, and to justice, to disavow the inference. If it is his meaning, then he owes it to the public to answer the following questions: Does he know by what public officer the contracts for supplying the army are made? Has he any ground to believe that that officer ever advised a single step which has led to the present Indian war? Does he know what his official conduct has been with regard to it? Does he know what his private character has been as to pecuniary affairs? Is he acquainted with a single *fact* or even *circumstance* which can justify a suspicion that he has ever been directly or indirectly interested in any contract in which he has had an agency?

Let him answer these questions, or otherwise assign the grounds of his insinuation, or let him be despised as a wanton calumniator.

ANTI-DEFAMER.

PRESIDENT'S SPEECH [1]

Draft by Hamilton.

November 6, 1793.

It is an abatement of the satisfaction with which I meet you, on the present occasion, that in felicitating you on the continuance of the national prosperity generally, I am not able to add to it information that the Indian hostilities, which have for some time distressed our northwestern frontier, have terminated.

You will doubtless learn with as much concern as I communicate it, that reiterated endeavors to effect a pacification have hitherto issued only in new and outrageous proofs of persevering hostility on the part of the tribes with whom we are in contest. An earnest desire to procure tranquillity to the frontier, to stop the further effusion of blood, to arrest the progress of expense, to promote the prevalent wish of the country for peace, have led to strenuous efforts, through various channels, to effect that desirable end, in which neither my own calculations of the event, nor my scruples which may have occurred concerning the dignity of government, have been permitted to outweigh the important considerations that have been mentioned.

A detail of the measures which have been adopted, will be laid before you, from which I persuade myself it will appear to you, that means as proper and as efficacious as could have been devised, have been employed. The issue indeed of some of them is yet depending, but while a favorable one is not to be

[1] *Writings of Washington*, xii., 27.

despaired of, every antecedent and collateral circumstance discourages an expectation of it.

In the course of these attempts, some valuable citizens have fallen victims to their zeal for the public service. A sanction hitherto respected even among savages has not been sufficient to protect from slaughter the messengers of peace. It will, I presume, be duly considered whether the occasion does not call for an exercise of liberality towards the families of the deceased.

It must add to your concern to know that in addition to the continuation of hostile appearances among the tribes north of the Ohio, some threatening symptoms have lately been revived among some of those south of it. According to the last accounts, an attack upon the settlements within the territory of the United States, was meditated on the part of the Chickamagas who form a portion of the nation of the Cherokees.

Further evidence, however, is necessary to ascertain the reality and extent of the evils; and in the meantime defensive precautions only have been permitted.

It is not understood that any breach of treaty or aggression on the part of the United States or citizens is even alleged, as a pretext for the spirit of hostility in this quarter. Other causes for it are indicated, which it would be premature to particularize.

I have reason to believe that every practicable exertion has been made to be prepared for the alternative of a continuance of the war in pursuance of the provisions made by law. A large proportion of the

troops authorized to be raised have been recruited, but the number is still incomplete. A particular statement from the proper department on this subject, and in relation to some other points which have been suggested, will afford more precise information as a guide to the legislative deliberations, and among other things will enable Congress to judge whether some additional stimulus to the recruiting service may not be advisable.

In looking forward to the future expense of the operations which may be necessary, I derive consolation from the information I receive, that, as far as the product of the revenues for the present year is known at the Treasury, there is a strong prospect that no additional burdens on the community will be requisite for the supplies of the ensuing year. This, however, will be better ascertained in the course of the present session; and it is proper to add, that the information proceeds upon the supposition of no material extension of the spirit of hostility.

I cannot dismiss the subject of Indian affairs without recalling to your attention the necessity of more adequate provision for giving energy to the laws throughout our interior frontiers, so as effectually to restrain depredations upon the Indians, without which every pacific system must prove abortive; and also for enabling the employment of qualified persons to reside as agents among the Indians, an expedient of material importance in the successful management of Indian affairs.

If some efficacious plan could be devised for carrying on trade with the Indians, upon a scale adequate

to their wants, and under regulations calculated to protect them from extortion and imposition, it would prove hereafter a powerful means of preserving peace and a good understanding with them.

The prosperous state of our revenue has been intimated. This would be still more the case, were it not for the impediments which in some places continue to embarrass the collection of the duties on home-made spirits. These impediments have lessened, and are lessening, as to local extent; and as applied to the community at large, the spirit of acquiescence in the law appears to be progressive.

But symptoms of an increasing opposition having recently manifested themselves in certain quarters, particularly in one where the enjoyment of immediate benefits from the common contributions of the country was to have been expected to fortify the general sense of respect and duty towards the government and its laws, and the disposition to share in the public burdens, I thought a special interposition on my part had become proper and advisable; and under this impression I have issued a proclamation.

Measures have also been begun for the prosecution of offenders; and Congress may be assured that nothing within constitutional and legal limits which may depend on me, shall be wanting to assert and maintain the just authority of the laws. In fulfilling this trust, I shall count entirely upon the full cooperation of the other departments of government, and upon the zealous support of all good citizens.

I cannot forbear to bring again into the view of the Legislature the expediency of a revision of the

judiciary system. A representation from the judges of the Supreme Court, which will be laid before you, points out some of the inconveniences that are experienced. In the course of the administration of the laws, considerations arise out of the structure of that system which tend to impede their execution. As connected with this subject, some provisions respecting the taking of bail upon processes out of the courts of the United States, and a supplementary definition of offences against the Constitution and laws, and of punishment for such offences, are presumed to merit particular attention.

The interests of the nation, when well understood, will be found to coincide with their moral duties. Among these, it is an important one to cultivate peace and friendship with our neighbors. To do this, we should make provision for rendering the justice we must sometimes require from them. I recommend therefore to your consideration, whether the laws of the Union should not be extended to restrain our citizens from committing acts of violence within the territories of other nations, which would be punished were they committed within our own. And in general, the maintenance of a friendly intercourse with foreign nations will be presented to your attention by the expiration of the laws for that purpose, which takes place, if not renewed, at the close of the present session.

In execution of the authority given by the Legislature, measures have been taken for engaging some artists from abroad to aid in the establishment of our mint; others have been employed at home. Pro-

vision has been made of the requisite buildings, and these are now putting into proper condition for the purposes of the establishment. There has been also a small beginning in the coinage of half dollars and cents; the want of small coins in circulation calling the first attention to them.

The regulation of foreign coins, in correspondency with the principles of our national coinage, will, I doubt not, be resumed and completed, being a matter essential to the due operation of the system, and to order in our pecuniary concerns.

It is represented that the regulations contained in the law which establishes the post-office, operate in experiment against the transmission of newspapers to different parts of the country. Should this, upon due inquiry, be found to be the fact, the legislative wisdom will, doubtless, apply a remedy, under a full conviction of the great importance of facilitating the circulation of political intelligence and information.

Information has been received of the adoption of a constitution for the State of Kentucky. An event so interesting to the happiness of the part of the nation to which it relates, cannot but make a correspondent impression. The communications concerning it will be laid before you.

It is proper likewise to inform you that, since my last communication on the subject, in further execution of the acts severally making provision for the public debt, and for the reduction thereof, three new loans have been effected, one for 3,000,000 of florins at Antwerp, at four and a half per cent., and four per cent. charges, and two others, each for 3,000,000

of florins, at Amsterdam, at four per cent., and five and five and a half per cent. charges. Among the objects to which these funds have been directed to be applied, the payment of the debts due to certain foreign officers, according to the provision made for that purpose during the last session, is included.

House of Representatives:

I entertain a strong hope that the state of the national finances is now sufficiently matured to enable you to enter upon systematic and effectual arrangements for the regular redemption and discharge of the public debt, according to the right which has been reserved to the government. No measure can be regarded as more desirable, whether viewed with an eye to its intrinsic importance, or to the general sentiment and wish of the nation.

Provision likewise is requisite for the reimbursement of the loan which has been made of the Bank of the United States, pursuant to eleventh section of the act by which it is incorporated. In fulfilling the public stipulations in this particular, a valuable saving may, it is expected, be made.

Appropriations for the service of the ensuing year, and for such extraordinaries as may have occurred, will demand and, I doubt not, will engage your early attention.

Senate and House of Representatives:

I content myself with recalling your attention generally, to such objects suggested in my former

communications as have not yet been finally acted upon, and as are not previously particularized.

The results of your joint deliberations hitherto will, I trust, be productive of solid and durable advantages to our constituents, and which, by conciliating more and more their approbation, may tend to strengthen their attachment to that constitution of the government upon which depend, under Divine Providence, their union, safety, and prosperity.

Still further to secure these inestimable ends, there is nothing which can have so powerful a tendency as the careful cultivation of harmony, combined with a due regard to stability in the public councils.

INDIAN AFFAIRS

Cabinet Opinion.

June 1, 1793.

My judgment balanced a considerable time on the proposed measure; but it has at length decided against it, and very materially, on the ground, that I do not think the United States can honorably or morally, or with good policy, embark the Choctaws in the war, without a determination to extricate them from the consequences, even by force. Accordingly it is proposed that, in settling our differences with the Creeks, "we *mediate effectually* the peace of the Chickasaws and Choctaws"; which I understand to mean, that we are to insist with the Creeks on such terms of peace for them as shall

appear to us equitable; and if refused, will exert ourselves *to procure them by arms.* I am unwilling, all circumstances foreign and domestic considered, to embarrass the government with such an obligation.

ALEXANDER HAMILTON.

CONVENING CONGRESS

HAMILTON TO WASHINGTON [1]

2½ MILES FROM PHILADELPHIA, October 24, 1793.

SIR:—I arrived at my house yesterday evening, where I found your letter of the 14th instant; having previously received that of the 25th of September, by the circuitous route of Albany, the evening before my departure from New York.

As to the right of the President to convene Congress out of the ordinary course, I think it stands as follows—"he may on *extraordinary occasions* convene both houses of Congress or either of them." These are the words of the Constitution. Nothing is said as to *time* or *place*—nothing restrictive as to either; I therefore think they both stand on the same footing. The discretion of the President extends to *place* as well as time. The reason of the thing as well as the words of the Constitution would extend it to both. The usual seat of the government may be in possession of an enemy, it may be swallowed up by an earthquake.

[1] This is an opinion as to the power of the President to convene Congress at some place other than that to which they had adjourned. The cause of the inquiry was the presence of yellow fever in Philadelphia.

I know of no law that abridges in this respect the discretion of the President—if a law could abridge a constitutional discretion of either branch.

But the doubt with me is whether the "extraordinary occasion" mentioned in the Constitution be not some unforeseen occurrence in the public affairs, which renders it advisable for *the public service* to convene Congress at some *time* different from that which the Constitution or some law has established; in other words, to anticipate their ordinary meeting, to have a *special* session for a *special object of public business* out of the pre-established course.

I doubt, therefore, whether the circumstance of a contagious disease existing at the seat of government be a constitutional ground for convening Congress at *another place*, but at the same *time* they had premeditated.

And I know that there are respectable opinions against the power of the President to change the place of meeting in such a case, so as I think to render it inexpedient to take the step.

But the President may *recommend* a meeting at some other place, as a place of preliminary rendezvous for the members of the two houses, that they may informally concert what further the exigency may require, and my *present opinion* inclines in favor of such a measure.

The question then would be, what place is the most eligible. Obvious reasons render it desirable that it should be as near Philadelphia as may consist with the motive for naming such a place—to wit, the safety of the members. 1. Innovation upon

the existing arrangement with regard to the seat of government ought to be avoided as much as possible. 2. Congress may think it necessary for regularity to go within the limits of the city (though but for an hour), to give legality by some summary act to another place of meeting; and with this view it will be convenient to meet at no great distance from the city. 3. The place recommended may influence the place of session. The President and heads of departments ought to be near Congress, but they cannot be long remote from their offices, and a removal of the public offices for one session would be in many ways an evil. Lastly, the less the President in such cases departs from the pre-established course, the less room there will be for cavil.

All these reasons would operate in favor of Germantown, if competent only to the momentary accommodation of Congress. Mr. Peters and some other gentlemen affirm that it is. I have myself great doubt on the point, and I have not had time to examine, but I cannot help paying deference to the opinion of those who assert its competency.

There is, however, another consideration not unworthy of attention. Experience seems to decide satisfactorily that there would be due safety at Germantown; but it is very probable this would not appear to be the case to the members generally. The alarm appears to be greatest in proportion as you go furthest from the seat of the disease. Yet I should hope the President's recommendation, stating the *fact* as evidenced by experience, would appease the apprehensions of the parties concerned.

If Germantown should not be found adequate, on the score of accommodation, Trenton, Reading, Lancaster, and Wilmington are the places which present themselves to choice as most eligible; nothing more northerly or southerly ought to be thought of. A place in Pennsylvania will best please the Pennsylvanians. They would be very jealous of Trenton, and they would have some, though less, jealousy of Wilmington; Lancaster would afford better accommodation than Reading. Wilmington would, I apprehend, be the most agreeable of these places to Congress.

But I am, upon the whole, of opinion that it will be best to make Germantown do, if possible. It will be time enough to decide when you arrive, and the interval will be employed to examine the ground.

Mrs. Hamilton and myself are very sensible to the obliging interest you have manifested on our recovery. Exercise and northern air have restored us beyond expectation. We are very happy that Mrs. Washington and yourself escaped.

I have the honor to remain, etc.

HAMILTON TO WASHINGTON

FAIR HILL, November 3, 1793.

SIR:—Not having been in condition to attend you yesterday, and (though free from fever) yet not being well enough to go abroad immediately, I have concluded to submit to you by a line the result of my further reflections on the subject of my last letter.

I believe it will be altogether safe for the ensuing

session of Congress to be held at Philadelphia, and that the good of the public service requires it, if possible. Under the existing prospect, I do not think it would be advisable for the President to give the business a different direction by any preliminary step. But as the apprehensions of distant members will probably be too much alive, it is desirable they should, if possible, be brought in the vicinity of Philadelphia *some days* beforehand, to examine and judge for themselves. It is likely they will then be satisfied that they can safely sit in the city. If otherwise, their sentiments concerning another place can be collected, as a guide to the President. To effect this end, I would advise that circular-letters be written (say by the Attorney-General, the Secretary of State not being here) to the respective members, informally recommending to them, as on the part of the President, to repair to Germantown and its vicinity some days, not more than a week, prior to the day for the meeting of Congress, giving the reasons for this recommendation.

I prefer this to any public act, because there is an inconvenience in giving any sort of formality to an unauthoritative proceeding.

An objection to the proceeding is, that the remote Southern members cannot be reached in time. But the answer to this is, that they will probably come forward, of course, to some neighboring State—New York, Delaware, or Maryland,—and letters for them may be lodged in each.

With true respect and attachment, I have the honor to be, etc.

OBJECTS TO BE COMMUNICATED IN SPEECH AND MESSAGES

(By Hamilton.)

1793.

I.—Proclamation.

II.—Embarrassments in carrying into execution the principles of neutrality; necessity of some auxiliary provisions by law. * * *

III.—Expectation of indemnification given in relation to illegal captures.

IV.—State of our affairs with regard to Great Britain, Spain, and France—claim of GUARANTEE—propositions *respecting Trade.*

V.—Indian affairs—failure of Treaty—state of expedition under Wayne—prospects with regard to Southern Indians.

VI.—Prudence of additional precautions for defence, as the best security for the peace of the country.

1. Fortification of principal seaports.
2. Corps of efficient militia.

VII.—Completion of settlement of Accounts between the United and Individual States; Provision for balances.

VIII.—Provision for a sinking fund.

IX.—Our revenues in the aggregate have continued to answer expectation as to productiveness, but if the various objects pointed out, and which appear to be necessary to the public interest, are to be accomplished, it can hardly be hoped that there will not be a necessity for some moderate addition to them.

X.—Prolongation of the Dutch instalment by way of loan ——— terms.

XI.—Provision for the second instalment due to the Bank of the United States.

XII.—For interest in the unsubscribed debt during the present year. *Quere.*

XIII.—Communication of the state of cessions of Light-houses. The cession in various instances has not been entire; it has reserved a partial right of jurisdiction for *process;* consequently is not strictly conformable to law.

XIV.—Commissary to receive, issue, and account for all public stores would conduce much to order and economy.

PRESIDENT'S SPEECH [1]

Draft by Hamilton.

December 3, 1793.

It is greatly to be lamented, for the sake of humanity, that the flame of war, which had before spread over a considerable part of Europe, has, within the present year, extended itself much further; implicating all those powers with whom the United States have the most extensive relations. When it was seen here, that almost all the maritime nations either were, or were likely soon to become, parties to the war, it was natural that it should excite serious reflections about the possible consequences to this country. On the one hand, it ap-

[1] *Writings of Washington*, xii., 36.

peared desirable that no impressions in reference to it should exist with any of the powers engaged, of a nature to precipitate arrangements or measures tending to interrupt or endanger our peace. On the other, it was probable that designing or inconsiderate persons among ourselves might, from different motives, embark in enterprises contrary to the duties of a nation at peace with nations at war with each other; * * * and, of course, calculated to invite and to produce reprisals and hostilities. Adverting to these considerations, in a situation both new and delicate, I judged it advisable to issue a proclamation (here insert the substance of the proclamation). The effects of this measure have, I trust, neither disappointed the views which dictated it, nor disserved the true interests of our country.

The Commissioners charged with the settlement of Accounts between the United and the Individual States, completed that important business within the time limited by law; and the balances which they have reported have been placed upon the Books of the Treasury. A copy of their Report, bearing date the —— day of —— last, will be laid before Congress for their information.

The importance of the object will justify me in recalling to your consideration the expediency of a regular and adequate provision for the redemption and discharge of the Public Debt. Several obvious considerations render the economy of time, in relation to this measure, peculiarly interesting and desirable.

It is necessary that provision should be also made for paying the second instalment of the loan of $2,000,000 from the Bank of the United States, agreeably to the terms of that loan; the first having been paid pursuant to the propositions for that purpose made during the last session.

On the first day of June last an instalment of 1,000,000 florins became payable on the loans of the United States in Holland. This was adjusted by a prolongation of the period of reimbursement, in nature of a new loan, at an interest of five per cent., for a term of ten years. The charges upon this operation were a commission of *three* per cent. It will readily be perceived that the posture of European affairs is calculated to affect unfavorably the measures of the United States for borrowing abroad.

The productiveness of the public revenues hitherto has continued to equal the anticipations that were formed of it; but it is not expected that it will prove commensurate with all the objects that have been suggested. Some auxiliary provisions will, therefore, it is presumed, be requisite; but these, it is hoped, can be made consistently with a due regard to the convenience of our citizens, who cannot but be sensible of the true wisdom of encountering a small present addition to their contributions for the public service, to avoid a future accumulation of burdens.

PRESIDENT'S MESSAGE [1]

Draft by Hamilton.

December, 1793.

Since the application which was made to the Government of France for the recall of its present minister, that minister has furnished new and material causes of dissatisfaction with his conduct. But these occasions of offence have hitherto passed without particular notice, in the hope that it would not be long before the arrival of an order of recall would terminate the embarrassment, and in the desire, inspired by sentiments of respect and friendship for his nation, to avoid as long as possible an act of extremity toward its agent. But a case has occurred which is conceived to render further forbearance inconsistent with the dignity and perhaps the safety of the United States. It is proved, as will be seen by papers now transmitted for the information of Congress, that this foreign agent has proceeded to the extraordinary lengths of issuing commissions in the name of the French Republic to several of our citizens, for the purpose of raising within the two Carolinas and Georgia a large military force, with the declared design of employing them, in concert with such Indians as could be engaged in the enterprise, in an expedition against the colonies, in our neighborhood, of a nation with which the United States are at peace.

[1] *Writings of Washington*, xii., 96. J. C. Hamilton dates this draft January, 1794, but a comparison with Washington's writings seems to show that it was prepared as an assistance in composing the message of Dec. 5, 1793. It may, however, have been made for a message which was never sent.

It would seem, likewise, from information contained in other papers, herewith also communicated, that a similar attempt has been going on in another quarter, namely, the State of Kentucky; though the fact is not yet ascertained with the requisite authenticity.

Proceedings so unwarrantable, so derogatory to the sovereignty of the United States, so dangerous in precedent and tendency, appear to render it improper that the person chargeable with them should longer continue to exercise the functions and enjoy the privileges of a diplomatic character.

The supersedence of the exercise of those functions, nevertheless, being a measure of great delicacy and magnitude, I have concluded not to come to an ultimate determination, without first placing the subject under the eye of Congress.

But unless the one or the other House shall, in the meantime, signify to me an opinion that it is not advisable so to do, I shall consider it my duty to adopt that measure after the expiration of ——— days from this communication.

PROCLAMATION FOR A NATIONAL THANKSGIVING[1]

Draft by Hamilton.

UNITED STATES, January 1, 1795.

By George Washington, President of the United States

When we review the calamities which afflict so many other nations, and trouble the sources of indi-

[1] *Writings of Washington*, xii., 132. Washington adopted Hamilton's draft verbatim.

vidual quiet, security, and happiness, the present condition of the United States affords much matter of consolation and satisfaction.

Our exemption hitherto from the evils of foreign war, an increasing prospect of the continuance of that precious exemption, the great degree of internal tranquillity we have enjoyed, the recent confirmation of that tranquillity by the suppression of an insurrection which so wantonly threatened it; the happy course of our public affairs in general; the unexampled prosperity of all classes of our citizens; are circumstances which mark our situation with peculiar indications of the Divine beneficence toward us.

In such a state of things, it is in an especial manner our duty as a people, with devout reverence and affectionate gratitude, to acknowledge our many and great obligations to Almighty God, and to implore Him to continue and confirm the blessings we experience.

Deeply penetrated with this sentiment, I, George Washington, President of the United States, do recommend to all religious societies and denominations, and to all persons whomsoever in the United States, to set apart and observe Thursday, the 19th day of February next, as a day of public thanksgiving and prayer, and on that day to meet together and render their sincere and hearty thanks to the great Ruler of nations, for the manifold and signal mercies which distinguish our lot as a nation, particularly for the constitutions of government which unite, and by their union establish, liberty with order, for the preservation of our peace, FOREIGN and DOMESTIC, for

the seasonable check which has been given to a spirit of disorder, in the suppression of the late insurrection, and generally, for the prosperous course of our affairs, public and private; and at the same time humbly and fervently to beseech the *kind Author* of these blessings graciously to prolong them to us; to imprint in our hearts a deep and solemn sense of our obligations for them; to teach us rightly to estimate their immense value; to preserve us from the wantonness of prosperity from jeopardizing the advantages we enjoy, by culpable or delusive projects; to dispose us to merit the continuance of His favors by not abusing them, by our gratitude for them, and by a correspondent conduct as citizens and as men to render this country more and more a safe and propitious asylum for the unfortunate of other countries; to extend among them true and useful knowledge; to diffuse and establish habits of sobriety, order, morality, and piety; and, finally, to impart all the blessings we possess or ask for ourselves to the whole family of mankind, that so men may be happy and God glorified throughout the earth. Done, etc.

EXPLANATION [1]

November 11, 1795.

A very virulent attack has recently been made upon the President of the United States, the present

[1] This personal explanation appeared in the newspapers, and the attacks which made such a defence necessary give a vivid idea of the bitterness of party politics at that time. The Democrats did not hesitate to accuse Washington of abusing his high trust for pecuniary advantage.

Secretary of the Treasury, and myself, as his predecessor in office, on the ground of extra payments to the President on account of his salary.

The charges against all the three are no less heinous than those of intentional violation of the Constitution, of the law, and of their oaths of office. I use the epithet *intentional*, because though not expressly used in the terms of the attack, it is implied in every line of it, since an involuntary error of construction, if that could ever be made out, would not warrant the imputation "of *contemning* and *despising every principle* which the people have established for the security of their rights, of *setting at defiance* all *law* and *authority*, and of *servile submission* and compliance with the *lawless will* and pleasure of a President."

Were considerations personal to myself alone to be considered, the present attempt would be treated with no greater attention than has been shown to all the anonymous slanders by which I have been so long and so implacably persecuted. But convinced by a course of observation for more than four years, that there exists in this country an unprincipled and daring combination, to obstruct by any means, *which shall be necessary and can be commanded, not short even of force*, the due and efficient administration of the present government, to make our most important national interests subservient to those of a foreign power, and as means to these ends to destroy, by calumny and misrepresentation, the confidence of the people in the truly virtuous men of our country, and to transfer it, with the power of the

state, to ambitious hypocrites and intriguing demagogues, perhaps corrupted partisans; perceiving likewise, that this infatuated combination, in the belief that the well-earned esteem and attachment of his fellow-citizens towards the Chief Magistrate of the United States, is the principal remaining actual obstacle to the execution of their plan, are making the most systematic efforts to extinguish those sentiments in the breasts of the people, I think it a duty to depart from my general rule of conduct, and to submit to the public with my name, an explanation of the principles which have governed the Treasury Department on the point in question.

I shall state in the first place, that the rule with regard to expenditures and appropriations which has *uniformly* regulated the practice of the department is this, viz.: *to issue no money from the Treasury, but for an object for which there was a law previously passed making an appropriation, and designating the fund from which the money was to arise; but there being such a law, and an adequate fund to support the expenditure, it was deemed justifiable, as well before as after the service was performed, or the supply obtained, for which the appropriation was designed, to make disbursements from the Treasury for the object, if it appeared safe and expedient so to do.* If made before, it was an advance or *anticipation*, for which the party was charged, and held accountable till exonerated by the performance of the service, or the furnishing of the supply. If *afterwards*, it was a *payment*, and went to some general head of account as such.

Thus, if a sum was appropriated for provisions for the army for a particular year, it was common to make *advances* on account to the contractors, long before the supplies were furnished. If the law was passed in one year for the next, there would be no hesitation to make the advance immediately after the passing of the law, and before the year to which the appropriation was applicable had commenced. So also sums would be furnished to the Department of War, in anticipation of the monthly pay of the officers and soldiers, and advances on account of pay, in particular circumstances, and for good reasons, would be actually made by that department to the officers and soldiers. And so likewise advances have been made for the use of the President and the members of both houses of Congress, in anticipation of their respective compensations.

It will without difficulty be comprehended, that this practice of the Treasury has in some cases been essential to the due course of the public service.

Every good judge will be sensible that from the insufficiency of individual capitals to such large advances as the supplies of an army require, it was indispensable to the obtaining of them, that anticipations from the Treasury would enable the contractors to do, what otherwise they would have been unable to do; and that these anticipations must also have had the effect of procuring the supplies on cheaper terms to the United States.

When it is answered to us, that the army has operated for several years past at several hundred miles' distance from the seat of government; and a

considerable part of the year, from the rudeness of the country, and obstructions of the waters, it is impracticable to transmit moneys to the scenes of payment, it will be perceived that without advances from the Treasury in anticipation of the pay, not only a compliance with the engagement of the government would have been impossible, but the troops must have been always left most unseasonably in arrear. In June, 1794, Congress passed a law, declaring that the army should in future be paid in such a manner as that the arrears should not exceed two months. Compliance with this regulation renders anticipations a matter of physical necessity, yet that law gave no special authority for the purpose.

A particular case, by way of example, in which, different from general rules, advances or anticipations in the War Department are necessary, respects the recruiting service. The officers, who are for a long time distant from their corps, require the accommodation of an advance of pay to be able to discharge their duty. Toward the possibility of enlisting men, it is indispensable they should carry with them the bounty money. Another, upon conjecture of what may be done, and with the possibility that from not being able to obtain the men the ultimate expenditure may not take place. This instance will suggest to reflection an infinite number of cases in the course of service in which a disbursement from the Treasury must precede the execution of the object, and may exceed the sum finally requisite for it.

These cases indicate the expediency and even

necessity of the construction which has regulated the practice of the Treasury. And it might be shown, if necessary, that it is analogous to the practice under the other government of the United States, and under other governments; and this too when the theory of expenditure equally is, as expressed in our Constitution, that no money shall be expended, but *in consequence* of an appropriation by law.

It remains to see whether this rule of conduct, so indispensable in the practice of the department, be permitted by a fair interpretation of the Constitution and the laws.

The general injunction of the Constitution (article i., § ix.) is, that "no money shall be drawn from the Treasury but *in consequence of* appropriations made by law."

That clause appears to me to be exactly equivalent to this other clause: "No money shall be drawn from the Treasury, but for which there is an appropriation made by law"; in other words, before money can legally issue from the Treasury for any purpose, there must be a law authorizing an expenditure, and designating the object and the fund. Then such a law is passed. This being done, the disbursement may be made consistently with the Constitution, either by way of advance, or anticipation, or by way of payment. It may precede or follow the service, supply, or other object of expenditure. Either will equally satisfy the words "in consequence of," which are not words of strict import, but may be taken in several senses—in one sense, that is "*in consequence of*" a thing which

being followed upon it, follows it in order of time. A disbursement must be either an *advance*, or *anticipation*, or a *payment*. 'T is not presumable that the Constitution meant to distinguish between these two modes of disbursement. It must have intended to leave this matter wholly to convenience.

The design of the Constitution in this provision was, as I conceive, to secure these important ends, —that the *purpose*, the *limit*, and the *fund* of every expenditure should be ascertained by a previous law. The public security is complete in this particular, if no money can be expended, but for *an object*, to an *extent*, and *out of a fund*, which the laws have prescribed.

Even in cases which affect only individual interests, if the terms of a law will bear several meanings, that is to be preferred which will best accord with convenience. In cases that concern the public, this rule is applicable with still greater latitude. Public convenience is to be promoted; public inconveniences to be avoided. The business of administration requires accommodation to so great a variety of circumstances, that a rigid construction would in countless instances arrest the wheels of government. It has been shown that the construction that has been adopted at the Treasury is in many cases essential in practice. This inclines the scale in favor of it,—the words "in consequence of," admitting of various significations.

The practice of the Legislature as to appropriation laws favors this construction.

These laws are generally distinct from those which

create the cause of expenditure. Thus the act which declares that the President shall be allowed twenty-five thousand dollars per annum; that which declares that each senator and representative shall be entitled to so much per day; that which determines that each officer and soldier shall have so much per month, etc.,—neither of these acts is an act of appropriation. The Treasury has not considered itself authorized to expend a single cent upon the basis of any such act; regarding it merely as constituting a claim upon the government for a certain compensation, but requiring, prior to an actual disbursement for such claim, that a law be passed, authorizing the disbursement out of a specified fund. This is what is considered as the law by which the appropriation is made, from which results to the public a double security.

Hence every year a particular act (sometimes more than one) is passed, appropriating certain sums for the various branches of the public service, and indicating the funds from which the moneys are to be drawn. The *object*, the *sum*, and the *fund* are all that are to be found in these acts. They are commonly, if not universally, silent as to any thing further.

This I regard as constructive of the clause in the Constitution. The appropriation laws are in execution of that provision, and fulfil all its purposes, and they are silent as to the distinction between anticipation and payment; in other words, as to the manner of disbursement.

Hence I conclude, that if there exist a law appro-

priating a certain sum for the salary of the President, an advance upon that sum in anticipation of the service is as constitutional as a payment after the service has been performed. In other words, that the advance of a quarter's salary at the beginning of a quarter is as much warranted by the Constitution as the payment of it at the end of a quarter.

It is in this sense that the present Secretary of the Treasury has affirmed, that "not one dollar has at any time been advanced for the use of the President for which there was not an existing appropriation." He did not mean to say that no money had been advanced in anticipation of the service, for the fact is otherwise; but nothing is more true than that the sums disbursed were within the limits of the sums appropriated. If there was an excess at the end of one year, there had been a previous appropriation for a succeeding year, upon which that excess was an advance.

It is objected to this practice, that the death of the party between the advance to him and the expiration of an equivalent term of service, by superseding the object of the advance, would render it a misexpenditure of so much money, and therefore a violation of the Constitution.

I answer, that the same casualty might have the same effect in other cases, in which it would be against common-sense to suppose that an advance might not be made with legality and propriety. Suppose, for example, a law was to be passed directing a given quantity of powder to be purchased for public use, and appropriating a definite sum for the

purchase; and suppose intelligence brought to the Secretary of the Treasury that the quantity required could be procured for prompt payment at Boston. It cannot in such case be doubted that the sum appropriated might legally be advanced to an agent to proceed to Boston to make the purchases. Yet, that agent might die, and the money never be applied according to its destination, or the desired quantity might be procured for a less sum, and a balance remain in his hands. In either case, this would be money disbursed which was not applied to the object of the law. In the last case, there is no final object for the disbursement, because the balance is a surplus. This proves that the possibility of a failure, or falling short of the object for which an advance is made, is not an objection to its legality. Indeed, the consequence is a possible one in every case of an *anticipation*, whether to contractors or to other public agents, for a determinate or an indeterminate purpose.

The only consequence is, that the sums unapplied must be accounted for and refunded. The distinction here again is between an *advance* and a *payment*. More cannot certainly be finally *paid* than is equal to the object of an appropriation, though the sum appropriated exceed the sum necessary. But more may be advanced, to the full extent of the appropriation, than may be ultimately exhausted by the object of the expenditure, on the condition, which always attends an advance, of accounting for the application, and refunding an excess. This is a direct answer to the question, whether more can be *paid*

than is necessary to satisfy the object of an appropriation. More cannot be *paid*, but more may be advanced on the accountability of the person to whom it is advanced.

But risk of loss to the public may attend this principle? This is true, but it is as true in all the cases of advances to contractors, etc., as in those of advances upon salaries and compensations. Nor does this point of risk affect the question of legality. It touches merely that of a prudent exercise of discretion. When large sums are advanced, it is usual to obtain security for their due application, or for indemnification. This security is greater or less according to the circumstances of the parties to whom the advances are made. When small sums are advanced, especially, if for the purposes quickly fulfilled, and to persons who are themselves adequate sureties, no collateral security is demanded. The head of the department "is responsible to the government for observing proper measures and taking proper precautions." If he acts so as to incur justly the charge of improvidence or profusion, he may be dismissed, or punished, according to the nature of his misconduct.

But the principle which is set up would (it is said) be productive of confusion, distress, and bankruptcy at the Treasury, since the appropriation for the support of government is made payable out of the accruing duties of each year; and an *established* right in the officers of government to claim their compensations, which amount to several hundred thousand dollars per annum, either on the first day of the

year, or on the first day of a quarter, before the services were rendered, would create a demand at a time when there might not, and possibly would not, be a single shilling in the Treasury, arising out of that appropriation, to satisfy it. These ideas with regard to the administration of the fund are very crude and incorrect, but it would complicate the subject to go into the development.

It is not pretended that there is an *established right* in the officers to claim their salaries by *anticipation*, at the beginning of a year, or at the beginning of a quarter. No such right exists. The performance of the service must precede the right to demand payment. But it does not follow that because there is no right in the officer to demand payment, it may not be allowable for the Treasury to advance upon account for good reasons. A discretion of this sort in the head of the department can, at least, involve no embarrassments to the Treasury, nor the formidable evils indicated; for the officer who makes the advance, being himself the judge, whether there is a competent fund, and whether it can be made with convenience to the Treasury, he will only make it when he perceives that no evil will ensue.

Let me recur to the example of advances to contractors for supplying the army. Suppose that in the terms of the contract certain advances were stipulated and made, but it turned out, nevertheless, that the contractor, disappointed in the funds on which he had relied, could not execute his contract without further advances. Here there would be no right on his part to demand such further advances; but there

would be a discretion in the Treasury to make them. This is the example of a discretion to do what there is not a right to demand. The existence of this discretion can do no harm, because the head of the Treasury will judge whether the state of it permits the required advances. But it is essential that the discretion should exist, because, otherwise, there might be a failure of supplies which no plan that could be substituted might be able to avert.

Yet the discretion is in neither case an arbitrary one; it is one which the head of the department is responsible to exercise with a careful eye to the public interest and safety. The abuse of it—in other words, the careless or wanton exercise of it, would be a cause of dismission for incapacity, or of punishment for malconduct.

Thus, advances on account of salaries, or to contractors for procuring public supplies, might be carried so far, and so improvidently managed, as to be highly culpable and justly punishable; but this is a different question from the violation of Constitution or law.

In all the cases it is a complete answer to the objection of embarrassment to the Treasury, that not the will of the parties, but the judgment of the head of the department is the rule and measure of the advances which he may make, within the bounds of the sums appropriated by law.

I consider the law which has been cited with regard to the pay of the army, as a legislative recognition of the rule of practice at the Treasury. The Legislature could not have been ignorant that it was

impracticable at certain seasons of the year to convey the money to the army to fulfil their injunction, without an advance from the Treasury before the pay became due. They presuppose a right to make this advance, and enjoin that the troops shall not be left more than two months in arrear. The origin of this law enforces the observation. It is known that it passed in consequence of a representation that the pay of the army was left too long in arrear, and it was intended to quicken the measures of payment. No person in either house of the Legislature, I believe, doubted that there was power to precede the service by advances, so as to render the payment even more punctual than was enjoined.

Indeed such advances, when the army operated at a distance, were necessary to fulfil the contract with the army. It became due monthly, and in strictness of contract, was to be made at the end of each month,—a thing impossible, unless advanced from the Treasury before it became due. No special authority was ever given for this purpose to the Treasury, but it appears to have been left to take its course on the principle that the disbursement might take place as soon as there was an appropriation, though in anticipation of the term of service.

The foregoing observations vindicate, I trust, the construction of the Treasury as to the power of making disbursements in anticipation of services and supplies, if there has been a previous appropriation by law for the object, and if the advances never exceed the amount appropriated; and at the same time evince that this practice involves no violation of the

constitutional provisions with respect to appropriations.

I proceed to examine that clause which respects the pay of the President. It is in these words: "The President shall, at stated times, receive for his services a compensation which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States or any of them."

I understand this clause as equivalent to the following: "There shall be established by law for the services of the President a *periodical compensation*, which shall not be increased nor diminished during the term for which he shall have been elected, and neither the United States nor any State shall allow him any emolument in addition to his periodical compensation."

This will, I think, at first sight appear foreign to the question of provisional advance on account of the compensation periodically established by law for his services.

The manifest object of the provision is to guard the independence of the President from the legislative control of the United States or of any State, by the ability to withhold, lessen, or increase his compensation.

It requires that the law shall assign him a definite compensation for a definite time. It prohibits the Legislature from increasing or diminishing this compensation during any term of his election, and it prohibits every State from granting him an additional emolument. This is all that the clause imports.

It is therefore satisfied as to the United States, when the Legislature has provided that the President shall be allowed a certain sum for a certain term of time; and so long as it refrains from making an alteration in the provision. All beyond this is foreign to the subject.

The Legislature having done this, an advance by the Treasury in anticipation of the service cannot be a breach of the provision. 'T is in no sense an additional allowance by the United States. 'T is a mere advance or loan upon account of the established periodical compensation; will legal ideas, or common parlance, warrant the giving the denomination of additional compensation, to the mere anticipation of the term of an established allowance? If they will not, 't is plain such an advance is no breach of this part of the Constitution.

If the clause is to be understood literally, it leads to an absurdity. The terms are, "The President shall *at stated times receive*," etc.; and again, "he shall not receive within that period," etc.

His allowance is at the rate of 25,000 dollars per annum, 6,250 dollars quarter-yearly. Suppose at the end of a year an arrear of 5,000 dollars was due to him, which he omits to receive till some time in the succeeding year, and in the succeeding year actually receives that balance with his full salary for the last year. 'T is plain, that he would not have received in the whole more than he was allowed by law, and yet in the *stated* period of one year he would have received 30,000 dollars, five thousand more than his salary for the year. In a literal sense, then,

constitutional provision as to *actual* payment would not have been complied with; for within the first *stated period* he would *not have received* the compensation allotted, and within the second of them he *would have received* more. In a literal sense it would be necessary to make the payment at the precise day, to the precise amount, neither more nor less, which as a general rule the indispensable forms of the Treasury render impossible. It follows that actual receipt or payment are not the criterion—but the absolute definitive allowance by law. An advance beforehand, or a payment afterward, are equally consistent with the true spirit and meaning of this part of the Constitution.

Let us now see if the construction of the Treasury violates the law which establishes the President's compensation.

The act of the 29th of September, 1789, allows to the President at the rate of 25,000 dollars per annum, to commence from the time of his entering on the duties of his office, and *to be paid quarterly out of the Treasury of the United States.*

The question is, what is to be understood from these words, "*to be paid quarterly out of the Treasury of the United States*"?

The conception of the Treasury has been, that these words, as used in this and in the analogous cases, were meant to define the time when the right of an individual *to the compensation earned* became absolute, not as a command to the Treasury *to issue the money at a precise day and no other.*

As mentioned above, the indispensable forms of

the Treasury, in compliance with the law establishing the department, and to secure a due accountability, make it impracticable to pay at the day; and if expressions of the kind in question are to be construed literally, and as a positive injunction to the Treasury to issue the money at the period defined, it will be as much a breach of the law to pay afterward as to advance beforehand.

The position that an after-payment would be a breach of the law, will hardly be contended for; and if not, the alternative seems to be the construction adopted by the Treasury. Such expressions denote simply, that at certain periods individuals acquire a perfect right to particular sums of money for their services, which it becomes a matter of course to pay; but they are not obliged to receive it at the day, nor is the Treasurer restrained from paying it afterward, or from anticipating by way of loan, if there are adequate reasons for such anticipation.

It is not true, as alleged, that the invariable practice of the Treasury as to *compensations* for services differs in principle from what was done in the case of the President.

Instances to the contrary have been stated. As to what regards the army, there has been sufficient explanation.

But it will be useful to be more particular as to the course which has been pursued with reference to the two houses of Congress.

The law that regulates their compensations (passed the 29th of September, 1789) allows to each member a compensation of six dollars *for every day* he shall

attend the House to which he belongs, together with six dollars for every twenty miles of distance to and from his place of residence; and directs that the compensation which shall be due shall be certified by the President of the Senate or Speaker of the House of Representatives, and shall be paid as public accounts are paid out of the Treasury.

By an arrangement between each house and the Treasury Department, the course actually pursued has been as follows:

Certain gross sums, usually at the commencement of each session, and from time to time afterward, have been advanced from the Treasury, at request, to the President of the Senate for the members of the Senate, to the Speaker of the House of Representatives for the members of that house, on account, and frequently in anticipation, of their accruing compensations. The President of the Senate in the Senate, and the Speaker of the House of Representatives in that house, disbursed the moneys to the individuals, and afterward, upon the close of each session, settled an account at the Treasury, accompanied with the certificates required by the law, and the receipts of the members, which were examined, adjusted, and passed, as other public accounts.

Whether there were any advances actually made to the members, in anticipation of their compensations, was a point never discussed between the Treasury and the presiding officers of the two houses with whom the money was deposited. But I understand that examples of such advances did exist in relation to the House of Representatives. The fact is, how-

ever, immaterial to the point in issue; that must be tested by the *times* of the *advances from the Treasury;* and it is certain that these were usually made in *anticipation of compensations to grow due;* and it is also certain that the course was well understood by both houses, and is exhibited by the accounts of the Treasurer laid before them in each session.

If, therefore, the advances for the President were unconstitutional and illegal, those for both houses of Congress were equally so; and if the President be chargeable with a violation of the Constitution, of the laws, and of his oath of office, on account of extra advances to his secretaries, whether with or without his privity, the members of both houses of Congress, without exception, have been guilty of the same crimes, in consequence of the extra advances, with their privity, to the presiding officers of their respective houses. A distinction may possibly be attempted to be taken in the two cases from this circumstance, that the law which allots the compensation of the members of the two houses does not use the words, "to be paid *every day* out of the Treasury," while that which establishes the President's compensation does use the terms, "to be paid quarterly out of the Treasury." But this distinction would be evidently a cavil. When a law fixes the term of a compensation, whether per day, per month, per quarter, or annum, if it says nothing more, it is implied that it is payable at each epoch out of the Treasury, in the same sense as if this was expressly said. This observation applies as well to the monthly pay of the army as to the daily pay of Congress.

Having examined the question as it stands upon the Constitution and the laws, I proceed to examine the course of the fact.

But previous to this I shall take notice of one point about which there have been doubts—and which it is not within my present recollection whether definitely settled or not by the accounting officers of the department. It respects the time of the commencement of the President's compensation. The law establishing it refers to the time of his entering upon the duties of his office, but without defining that time.

When in a constitutional and legal sense did the President enter upon the duties of his office?

The Constitution enjoins that before he enters upon the execution of his office, he shall take a certain oath, which is prescribed. This oath was not taken till the 30th of April, 1789. If we date the entrance upon the duties of his office at the time of taking this oath, it determines the epoch to be the 30th of April, 1789.

The purpose of the arrangement which was made for the payment of the members of Congress was twofold. It was to obviate embarrassment to them by facilitating and accelerating the receipt of their compensations, and to avoid an inconvenient multiplication of adjustments, entries, warrants, and payments. The theory of the provision admitted of as many Treasury settlements, entries, warrants, and payments, each day, as there were members in both houses.

But there is room for another construction. The

3d of March, 1789, is the day when the term for which the President, the Vice-President, and the members of the Congress were first elected, was deemed to commence. The Constitution declares that the President shall hold his office for four years; and it is presumable that the clause respecting his compensation contemplates its being for the whole term for which he is to hold his office. Its object may otherwise be evaded.

It is also, I believe, certain, that the President may execute his office and do valid acts as President without previously taking the oath prescribed; though in so doing, if voluntarily, he would be guilty of a breach of the Constitution, and would be liable to punishment. The taking the oath is not, therefore, necessarily, the criterion of entering upon the duties of office.

It is a fact, if I remember right, that the President was at New York, the place assigned for the first meeting of the government, on the 3d of March, 1789, which might be considered as an entrance upon the duties of his office; though from the delays which attended the meeting of Congress, the oath was deferred till the 30th of April following.

On the strength of these facts, it may be argued, that by force of the Constitution, dating the commencement of the President's term of service on the 3d of March, 1789, the law respecting his compensation ought to be considered as referring to that period, for a virtual entrance upon the duties of his office.

In stating this construction, I must not be understood to adopt it. I acknowledged that the other, as most agreeable to the more familiar sense of the law terms, has appeared to me preferable, though I had reason to believe that an important officer of the government (I do not mean the President) once thought otherwise. The result, in point of fact, will vary, as the one or the other is deemed the true construction.

I return to an examination of the course of the transaction.

Authentic statements which have been published, with some supplementary ones received from the Treasury upon the occasion, exhibit the following results.

1st Result. The sums advanced for the use of the President from the Treasury have never exceeded the sums previously appropriated by law: though they have sometimes exceeded, sometimes fallen short, of the sums actually due for services. This is thus explained:

An Act of the 29th of September, 1789, appropriated for the compensation of the President . .	$25,000
The sums to the 8th of April, 1790, and charged to this appropriation, are	25,000
An Act of the 26th of March, 1790, appropriated for the same purpose	25,000
The sums advanced from May 4, 1790, to 28th February, 1791, and charged to this appropriation, are	25,000
An Act of the 11th February, 1791, appropriated for the same purpose	25,000

The sums advanced from the 28th February, 1791, to 27th of December in the same year, and charged to this appropriation, are . .	$22,150
Excess of appropriation beyond the advances .	2,850
An Act of the 23d December, 1791, appropriated for the same purpose	25,000
The sums advanced from the 3d January, 1792, to the 15th January, 1793, and charged to this appropriation, are	25,000
An Act of the 28th February, 1793, appropriates for the same purpose	25,000
The sums advanced from the 9th March, 1793, to 27th of December in the same year, and charged to this appropriation, are . .	25,000
An Act of the 14th of March, 1794, appropriates for the same purpose	25,000
The sums advanced from the 17th of March, 1794, to the 1st of January, 1795, and charged to the same appropriation, are	25,000
An Act of the 2d of January, 1795, appropriated for the same purpose	25,000
The sums advanced from the 12th of January, 1795, and prior to the 1st of October in the same year, and charged to this appropriation, are	12,500
Excess of appropriation beyond advances, on the 1st of October, 1795	12,500
Excess of appropriation on the Act of the 11th of February, 1791	2,850
Total excess of appropriations beyond advances, to the 1st of October, 1795 . . .	$15,350

The residue of the proposition is illustrated by the quarterly statement of salary and advances at foot.

2d Result. The Treasury has never been in advance for the President beyond the sums actually accrued, and due to him for services, to the amount of one quarter's salary. The largest advance at any time is $6,154. A quarter's salary is, $6,250. Deduct the sums at certain times in arrear from those at other times in advance, the average of the advances for the whole term of his service is about ——

The particulars of this result appear in the statement at foot. This statement is digested by a quarter of the calendar year, which is the established course of the Treasury, and a course essential to the order of its affairs; that is to say, it is essential there should be certain fixed periods to which the ordinary stated disbursements are referred, and in conformity with which the accounts of the Treasury are kept.

3d Result. On the 1st of October, 1795, there was actually due to the President, for his compensation, over and above all advances for his use, the sum of $846. This likewise appears from the statement at foot, and entirely refutes the malevolent suggestion which has appeared, of an accumulation of advances to twelve or fifteen thousand dollars.

4th Result. The sums advanced for the President prior to the commencement of the term of his second election, the 3d of March, 1793, fall short of the sums appropriated for his compensation, $2,850. Thus:

The aggregate of the sums appropriated for four years, from the 29th of September, 1789, to the 23d of December, 1791, inclusively, is	$100,000
The amount of all the sums advanced prior to the 3d of March, 1793, is	97,150
Excess of appropriations beyond advances .	$2,850

It is nevertheless true, that not only have there been frequent anticipations of the President's salary, as appears more particularly in the statement at foot, but, counting from the 30th of April, 1789, as the commencement of his compensation, the sums advanced for his use prior to the 3d of March, 1793, the expiration of his first term of election, exceed those actually due up to that period, by $1,108.34.

If, on the contrary, the construction were adopted which dates his compensation on the 4th of March, 1789, there would have been a balance due to him on the 4th of March, 1795, of 2,850 dollars.

But proceeding on the first supposition, the whole question still turns upon the legality of the advances. If it was legal to make him an advance, in anticipation of his salary, within any period of his election—within one quarter, on account of a succeeding quarter,—it was equally legal to do it within one year, on account of a succeeding year; and within one term of an election, on account of a succeeding term. The only inquiry would be, in either case, Will the sum advanced be within the bounds of the sums before that time appropriated? It has been seen that the sums appropriated for the first four years of service exceeded those advanced prior to the commencement

of the second period of election by 2,850 dollars; besides this, on the 28th of February, 1793, there was a further appropriation of 25,000 dollars, so that at the beginning of the second term the total appropriations exceeded the total disbursements by 27,850 dollars.

Thus has it been shown that the advances for the use of the President have been governed by a rule of construction which has obtained in analogous cases, or, more truly, which has regulated the general course of disbursements from the Treasury—a rule which, I trust, has been demonstrated to be consonant with the Constitution and the laws.

It is requisite to inquire a little further, whether there has been any improper use or rather abuse of the discretion which is contended for; for here there is likewise an unquestionable responsibility. It is seen that the advances have at no time equalled one quarter's salary.

I ask, Was it unreasonable or unfit, if constitutional and legal, to afford the President of the United States an accommodation of this extent?

I pledge my veracity that I have always understood, and to this moment I have good reason to be satisfied, that the expenses of the President—those of his household and others incident to his official situation—have fully equalled, if not on some occasions exceeded, the allowance made to him by the United States. Under this conviction especially, how could the head of a department hesitate by so small an accommodation as the advance of less than a quarter's salary, to enable the President of the

United States to meet his expenses as they accrued, without being obliged to encroach upon his own private resources, or to resort to the expedient of borrowing, to defray expenses imposed upon him by public situation? I knew that no possible risk could attend the advance, little considerable as it was. The estate of the President was answerable in case of death or other premature vacancy for the indemnification of the government.

Reasons of a peculiar kind forbade hesitation. The scale of expense was such as to render the income even of what is deemed a large landed property in this country, a slender auxiliary; without an advance from the Treasury, it was not impossible borrowing might be necessary. Was it just to compel the President to resort to that expedient, for a purpose in fact public, at his private expense? Was it for the dignity of the nation that he should have been exposed to a necessity, an embarrassment of this sort?

My judgment and feelings answered both these questions in the negative. I entertained no doubt of the constitutionality and legality of the advance, and I thought the making of it due to the situation, due to propriety, due to every public consideration connected with the subject. I can never regret it.

How far the President was privy to the course of advances I cannot say; but it is certain that they have been all made to his private secretaries upon a general arrangement, and not by special directions from him. And I think it proper to add, that very early in the day, and probably before any was made,

on an application to Mr. Lear for a sum which would constitute an advance, he qualified it by this observation: "If in your opinion it can be done with legality and perfect propriety." I answered that I had no doubt of either. I shall not attempt to assume any greater responsibility in this transaction than belongs to me; but I have been accustomed to think that the responsibility for the due and regular disbursement of moneys from the Treasury lies exclusively with the officers of the department, and that, except in a very palpable and glaring case, the charge of blamable participation could not fall on any other person.

As between the officers of the Treasury, I take the responsibility to stand thus. The Secretary and Comptroller, in granting warrants upon the Treasury, are both answerable for their legality. In this respect, the Comptroller is a check upon the Secretary. With regard to the expediency of an advance, in my opinion, the right of judging is exclusively with the head of the department. The Comptroller has no voice in this matter. So far, therefore, as concerns legality in the issues of money while I was in the department, the Comptroller must answer with me; so far as a question of expediency or the due exercise of discretion may be involved, I am solely answerable. And uniformly was the matter so understood between successive comptrollers and myself. Also it is essential to the due administration of the department, that it should have been so understood.

I have stated my reasons for considering the advances made, for the use of the President, con-

stitutional, legal, and proper. But I pretend not to infallibility; 't is possible I may have erred; but to convert error into guilt, it must be supposed to have been wilful. To suppose it wilful, it is necessary to trace it to some interested or sinister motive. If any appear, let it be pointed out. It is not common for men to commit crimes without some adequate inducement.

What criminal inducement would have probably influenced the rule of construction as to advances which has been stated to have been adopted and acted upon at the Treasury? What criminal inducement particularly could have led to the application of this rule to the President's compensation, in so restricted a form as never to equal one quarter's salary? Who in his senses will believe that the President would consciously have hazarded the imputation of violating the Constitution, the laws, and his oath of office, by imposing on the officers of the Treasury the necessity of making him so paltry an advance, falsely and ridiculously called a donation? Who will believe that those officers would have consented to expose themselves to the same imputation, by compliance, when they knew that the evidence of their guilt must regularly be communicated in each succeeding session, to both houses of Congress, and to the public at large? To believe either, is to believe all the parties concerned foolish, as well as profligate in the extreme, destitute equally of intellect as of principle.

To an observation made by Mr. Wolcott in the communication from the Treasury, it has been

answered, that there was no merit in the disclosure, because the number of agents and the forms of the Treasury rendered it unavoidable. The fact is so—but the force of the observation turns upon the egregious folly of intentionally committing the crimes imputed; when it was certain, beforehand, that the means of detection must be furnished, and without delay, by the Treasury itself.

It is certain, that there never has been the least attempt at mystery or concealment. The documents reported by the Treasury to both houses of Congress, carried in their face the prominent evidence of what was done. Frequent and indiscriminate personal suggestions regarded the principle of action. It is evident that it must have been understood and acquiesced in by all the members of the two houses of Congress.

Hard would be the condition of public officers if even a misconstruction of constitutional and legal provisions, attended with no symptom of criminal motive, carrying the proof of innocence in the openness and publicity of conduct, could justly expose them to the odious charges which on this occasion are preferred. Harder still would be their condition if, in the management of the great and complicated business of a nation, the fact of misconstruction, which is to constitute their guilt, is to be decided by the narrow and rigid rules of a criticism no less pedantic than malevolent. Pre-eminently hard in such circumstances was the lot of the man who, called to the head of the most arduous department in the public administration in a new government, without

the guidance of antecedent practice and precedent, had to trace out his own path, and to adjust for himself the import and bearings of delicate and important provisions in the Constitution and in the laws.

Reposing myself on a consciousness which, in no possible situation, can fail to prove an invulnerable shield to my tranquillity, I leave to a candid public to pronounce the sentence which is due to an attempt, on such a foundation, to erect against the President of the United States, my successor in office, and myself, the heinous charges of violation of the Constitution, violation of the laws, exaction of arbitrary will on the one side, abject submission on the other, misapplication of the public money, and, to complete the newspaper group, intentional perjury.

A. HAMILTON.

WASHINGTON'S SPEECH TO CONGRESS[1]

December 8, 1795.

I trust I do not deceive myself while I indulge the persuasion, that I have never met you at any period, when more than at the present the situation of our public affairs has afforded just cause for mutual congratulation, and for inviting you to join with me in profound gratitude to the Author of all Good for the numerous and distinguished signal blessings we enjoy.

The termination of the long, expensive, and distressing war, in which we have been engaged with

[1] *Writings of Washington*, xii., 56. This draft by Hamilton also was adopted verbatim.

certain Indians northwest of the Ohio, is placed in the option of the United States by a treaty which the commander of our army has provisionally concluded with twelve of the most powerful of the hostile tribes in that region. In the adjustment of these terms, the satisfaction of the Indians was deemed an object worthy no less of the policy than of the liberality of the United States, as the necessary basis of permanent tranquillity. This object, it is believed, has been fully attained. The articles agreed upon will be immediately laid before the Senate for their advice and consent.

The Creek and Cherokee Indians, who alone of the Southern tribes had annoyed our frontier, have lately confirmed their pre-existing treaties with us, and have given unequivocal evidence of a sincere disposition to carry them into effect by the surrender of the prisoners and property they had taken. But we have to lament that the fair prospect in this quarter has been momentarily clouded by wanton murders, which some citizens of Georgia have perpetrated on hunting parties of the Creeks, which have again involved that frontier in disquietude and danger, or which will be productive of further expense, and is likely to occasion more effusion of blood. Measures are in train to obviate or mitigate the consequences, and with the reliance of being able at least to prevent general hostility.

A letter from the Emperor of Morocco announces to me the renewal of our treaty, and consequently the restoration of peace, with that power. But the instrument for this purpose, which was to pass

through the hands of our minister resident at Lisbon, who was temporarily absent on business of importance, is not yet received. It is with peculiar satisfaction I can add to this intelligence, that an agent, deputed on our part to Algiers, communicates that the preliminaries of a treaty with the regency of that country had been settled, and that he had no doubt of completing the business of his mission, comprehending the redemption of our unfortunate fellow-citizens from a grievous captivity.

The last advices from our envoy to the court of Madrid give, moreover, the pleasing information that he had received positive assurances of a speedy and satisfactory conclusion of his negotiation. While the event, depending on unadjusted particulars, cannot be regarded as ascertained, it is agreeable to cherish the expectation of an issue, which, securing amicably very essential interests of the United States, will, at the same time, establish the foundation of durable harmony with a power whose friendship we have so uniformly and so sincerely endeavored to cultivate.

Though not before officially disclosed to the House of Representatives, you are all apprised that a treaty of amity, commerce, and navigation has been negotiated with Great Britain, and that the Senate, by the voice of two thirds, have advised and consented to its ratification, upon a condition which excepts part of one article. Agreeably to this advice and consent, and to the best judgment I was able to form of the public interest, after full and mature deliberation, I have added my sanction. The result

on the part of His Britannic Majesty is unknown. When received, the subject will, without delay, be placed before Congress.

This interesting summary of affairs, with regard to the foreign powers between whom and the United States controversies have subsisted, and with regard also to those of our Indian neighbors, with whom we have been in a state of enmity or misunderstanding, opens a wide field for consoling and gratifying reflections. If, by prudence and moderation on every side, the extinguishment of all the causes of external discord, which have heretofore menaced our tranquillity, on terms consistent with our national rights and honor, shall be the happy result, how firm and how precious a foundation will have been laid for establishing, accelerating, and maturing the prosperity of our country!

Contemplating the situation of the United States in their internal as well as external relations, we find equal cause for contentment and satisfaction, while the greater part of the nations of Europe, with their American dependencies, have been, and several of them continue to be, involved in a contest unusually bloody, exhausting, and calamitous; in which the ordinary evils of foreign war are aggravated by domestic convulsion, riot, and insurrection; in which many of the arts most useful to society are exposed to decay or exile; and in which scarcity of subsistence embitters other sufferings, while even the anticipations of the blessings of peace and repose are alloyed by the sense of heavy and accumulating burthens, which press upon all the departments of in-

dustry, and threaten to clog the future springs of government;—our favored country, happy in a striking contrast, enjoys universal peace—a peace the more satisfactory because preserved at the expense of no duty. Faithful to ourselves we have *not been unmindful of any obligation* to others. Our agriculture, our commerce, our manufactures, prosper beyond former examples (the occasional depredations upon our trade, however detrimental to individuals, being greatly overbalanced by the aggregate benefits derived to it from a neutral position). Our population advances with a celerity which exceeds the most sanguine calculations, augmenting fast our strength and resources, and guaranteeing more and more our national security. Every part of the Union gives indications of rapid and various improvement. With burthens so light as scarcely to be perceived, with resources more than adequate to our present exigencies, with a mild Constitution and wholesome laws, is it too much to say that our country affords a spectacle of national happiness never surpassed, if ever before equalled, in the annals of human affairs?

Placed by Providence in a situation so auspicious, motives the most sacred and commanding admonish us, with sincere gratitude to Heaven and pure love of our country, to unite our efforts to preserve, prolong, and improve the immense advantages of our condition. To co-operate with you in this most interesting work is the dearest wish of my heart.

Fellow-citizens :—Amongst the objects which will claim your attention in the course of the session, a

review of our military establishment will not be the least important. It is called for by the events which have changed, and are likely still further to change, the relative situation of our interior frontier. In this review you will no doubt allow due weight to the consideration, that the questions between us and certain foreign powers are not yet finally adjusted, that the war in Europe is not yet terminated, and that the evacuation, of Western posts, when it shall happen, will demand a provision for garrisoning and securing them. You will consider this subject with a comprehensiveness equal to the extent and variety of its relations. The Secretary at War will be directed to lay before Congress the present state of the Department of War.

With the review of our army is naturally connected that of our militia establishment. It will merit inquiry what imperfections, in the existing plan, experience may have unfolded; what improvements will comport with the progress of public opinion. The subject is of so much magnitude, in my estimation, as to beget a constant solicitude that the consideration of it will be renewed, till the greatest attainable degree of perfection is accomplished. Time, while it may furnish others, is wearing away some advantages for forwarding the object. None better deserves the persevering attention of our public councils.

In contemplating the actual condition of our Western borders, the pleasure it is calculated to afford ought not to cause us to lose sight of a truth, to the confirmation of which every day's experience con-

tributes, viz.: That the provisions heretofore made are inadequate to protect the Indians from the violences of the irregular and lawless part of the frontier inhabitants; and that, without some more effectual plan for restraining the murders of those people, by bringing the murderers to condign punishment, all the exertions of the government to prevent or repress the outrages of the Indians, and to preserve peace with them, must prove fruitless—all our present agreeable prospects fugitive and illusory. The frequent destruction of innocent women and children, chiefly the victims of retaliation, must continue to shock humanity, while an expense truly enormous will drain the treasure of the Union.

To enforce the observance of justice upon the Indians, it is indispensable there should be competent means of rendering justice to them. If to these means could be added a provision to facilitate the supply of the articles they want on reasonable terms (a measure the mention of which I the more readily repeat, as in all the conferences with them they urge it with solicitude), I should not hesitate to entertain a strong hope of a permanent good understanding with them. It is agreeable to add that even the probability of their civilization, by perseverance in a proper plan, has not been diminished by the experiments thus far made.

Gentlemen of the House of Representatives:

The state of the revenue in its several relations, with the sums which have been borrowed and reimbursed, pursuant to different acts of Congress, will be

submitted by the proper officer—together with an estimate of the appropriations necessary to be made for the current service of the ensuing year. Reports from the late and present Director of the Mint (which I shall also cause to be laid before you) will show the situation and progress of that institution, and the necessity of some further legislative provisions for carrying the business of it more completely into execution, and for checking abuses which appear to be arising in particular quarters.

Whether measures may not be advisable to reinforce the provision for the redemption of the public debt, will not fail, I am sure, to engage your attention. In this examination, the question will naturally occur, whether the present be not a favorable juncture for the disposal of the vacant lands of the United States northwest of the Ohio. Congress have demonstrated the sense to be, and it were superfluous to repeat more, that whatever will tend to accelerate the honorable extinguishment of our public debt, will accord as much with the true interests of our country as with the general sense of our constituents.

Gentlemen:—The progress in providing materials for the frigates, and in building them, and the state of the fortifications of our harbors, the measures which have been pursued for obtaining proper sites for arsenals, and for furnishing our magazines with military stores, and the steps which have been taken in execution of the law for opening a trade with the Indians, will also be presented for the information of Congress.

MESSAGE FOR WASHINGTON TO CONGRESS, IN REPLY TO A CALL FOR PAPERS RELATING TO THE TREATY WITH GREAT BRITAIN [1]

Draft by Hamilton.

March 20, 1796.

I have received your resolution of the —— inst., and have considered it with the attention always due to a request of the House of Representatives. I feel a consciousness (not contradicted I trust by any part of my conduct) of a sincere disposition to respect the rights, privileges, and authorities of Congress, collectively and in its separate branches—to pay just deference to their opinions and wishes—to avoid intrusion on their province—to communicate freely information pertinent to the subjects of their deliberation. But this disposition, keeping steadily in view the public good, must likewise be limited and directed by the duty incumbent upon us all, of preserving inviolate the constitutional boundary between the several departments of the government; a duty enjoined by the very nature of a Constitution which defines the powers delegated, and distributes them among different depositories; enforced by the solemn sanction of an oath; and only to be fulfilled by a regard no less scrupulous for the rights of the Executive than for those of every other department.

When I communicated to the House of Representatives the treaty lately made with Great Britain, I did not transmit the papers respecting its negotiation, for reasons which appeared to me decisive.

[1] *Writings of Washington*, xii., 112.

It is contrary to the general practice of governments to promulge the intermediate transactions of a foreign negotiation, without weighty and special reasons. The motives for great delicacy and reserve on this point are powerful. There may be situations of a country in which particular occurrences of a negotiation, though conducted with the best views to its interest, and even to a satisfactory issue, if immediately disclosed, might tend to embarrassment and mischief in the interior affairs of that country. Confidential discussions and overtures are inseparable from the nature of certain negotiations, and frequently occur in others. Essays are occasionally made by one party to discover the views of another in reference to collateral objects; motives are sometimes assigned for what is yielded by one party to another which, if made public, might kindle the resentment or jealousy of other powers, or might raise in them pretensions not expedient to be gratified. Hence it is a rule of mutual convenience and security among nations, that neither shall, without adequate cause and proper reserve, promulge the details of a negotiation between them; otherwise, one party might be injured by the disclosures of the other, and sometimes without being aware of the injury likely to be done.

Consequently, the general neglect of this rule in the practice of a government, would naturally tend to destroy the confidence in its prudence and delicacy and that freedom of communication with it, which are so important in the intercourses between nation and nation, toward the accommodation of

mutual differences and the adjustment of mutual interests.

Neither would it be likely to promote the advantage of a nation, that the agents of a foreign government with which it was at any time in treaty, should act under the apprehension that every expression, every step of theirs, would presently be exposed, by the promulgation of the other party, to the criticism of their political adversaries at home. The disposition to a liberal, and, perhaps, for that very reason, a wise policy in them, might be checked by the reflection, that it might afterward appear from the disclosures on the other side, that they had not made as good bargains as they might have made. And while they might be stimulated by this to extraordinary effort and perseverance, maxims of greater secrecy and reserve in their cabinet would leave their competitors in the negotiation without the same motive to exertion. These having nothing to fear from the indiscretion of the opposite government, would only have to manage with caution their communications to their own. The consequence of such a state of things would naturally be an increase of obstacles to the favorable close of a negotiation, and the probability of worse bargains for the nation in the habit of giving indiscreet publicity to its proceedings.

The agents of such a nation themselves would have strong inducements to extreme reserve in their communications with their own government, lest parts of their conduct might subject them in other quarters to unfriendly and uncandid constructions,

which might so narrow the information they gave, as scarcely to afford sufficient light, with regard either to the fitness of their own course of proceeding, or the true state and prospects of the negotiation with which they were charged.

And thus, in different ways, the channels of information to a government might be materially obstructed by the impolitic practice of too free disclosure, in regard to its foreign negotiations.

Moreover, it is not uncommon for the instructions to negotiating agents, especially where differences are to be settled, to contain observations on the views and motives of the other party, which after an amicable termination of the business it would be contrary to decorum, unfriendly and offensive to make public. Such instructions also frequently manifest views which, if disclosed, might renew sources of jealousy and ill-will which a treaty had extinguished, might exhibit eventual plans of proceeding which had better remain unknown for future emergencies, and might even furnish occasion for suspicion, and pretext for discontent, to other powers. And in general, where more had been obtained by a treaty than the *ultimata* prescribed to the negotiator, it would be inexpedient to publish those *ultimata;* since, among other ill effects, the publication of them might prejudice the interest of the country in future negotiations with the same or with different powers.

These reasons explain the grounds of a prevailing rule of conduct among prudent governments, namely, not to promulge without weighty cause, nor without

due reserves, the particulars of a foreign negotiation. It so happens indeed that many of them have no immediate application to the case of the present treaty. And it would be unadvisable to discriminate here between such as may and such as may not so apply. But it would be very extraordinary, situated as the United States were in relation to Great Britain at the commencement of the negotiation, if some of them did not operate against a full disclosure of the papers in which it is recorded.

Connected with these general reasons against the transmission of the papers with the treaty, it was proper to consider if there were any special reasons, which recommended in the particular case a departure from the rule, and especially whether there was any purpose to which the House of Representatives is constitutionally competent which might be elucidated by those papers.

This involved a consideration of the nature of the constitutional agency of that house, in regard to treaties.

The Constitution of the United States empowers the President, with the advice and consent of the Senate, two thirds concurring, to *make* treaties. It nowhere professes to authorize the House of Representatives or any other branch of the government to partake with the President and Senate in the making of treaties. The whole power of making treaties is therefore by the Constitution vested in the President and Senate.

To make a treaty, as applied to nations, is to *conclude* a contract between them *obligatory on their*

faith: but that cannot be an obligatory contract, to the validity and obligation of which the assent of another power in the state is constitutionally necessary.

Again, the Constitution declares that a treaty made under the authority of the United States shall be a "supreme law of the land,"—let it be said "a law." A *law* is an obligatory rule of action *prescribed* by the competent authority, but that cannot be an obligatory rule of action or a law, to the validity and obligation of which the assent of another power in the state is constitutionally necessary.

Hence a discretionary right in the House of Representatives to assent or not to a treaty, or, what is equivalent, to execute it or not, would negative these two important provisions of our Constitution —1st, that the President and Senate shall have power to make treaties; 2dly, that a treaty made by them shall be a law; and in the room of them would establish this provision, "that the power of making treaties resides in the President, Senate, and House of Representatives." For, whatever coloring may be given, a right of discretionary assent to a contract is a right to participate in the making of it.

Is there any thing in the Constitution which by *necessary* implication changes the force of the express terms that regulate the deposit of the power to make treaties?

If there is, it must be found in those clauses which regulate the deposit of the legislative power. Here two questions arise:

1st. Can the power of treaty reach and embrace objects upon which the legislative power is authorized

to act, as the regulation of commerce, the defining of piracy, etc.; or are these objects virtually excepted out of the operation of that power?

2dly. If it can reach and embrace those objects, is there any principle which as to them gives to Congress, or, more properly, the House of Representatives, a discretionary right of assent or dissent?

The affirmative of the first question is supported by these considerations:

1. The words which establish the power of treaty are manifestly broad enough to comprehend all treaties.

2. It is a reasonable presumption that they were meant to extend to all treaties usual among nations, and so to be commensurate with the variety of exigencies and objects of intercourse which occur between nation and nation; in other words, that they were meant to enable the organ of the power to manage with efficacy the external affairs of the country in all cases in which they must depend upon compact with another nation.

3. The treaties usual among nations are principally those of peace, alliance, and commerce. It is the office of treaties of peace to establish the cessation of hostilities and the conditions of it, including frequently indemnifications, sometimes pecuniary ones. It is the office of treaties of alliance to establish cases in which nations shall succor each other in war, stipulating a union of forces, the furnishing of troops, ships of war, pecuniary and other aids. It is the office of treaties of commerce to establish rules and conditions according to which nations shall trade with each other, regulating as far as they go the

external commerce of the nations in treaty. Whence it is evident that treaties naturally bear in different ways upon many of the most important objects upon which the legislative power is authorized to act; as the appropriation of money, the raising of armies, the equipment of fleets, the declaring of war, the regulation of trade. But,

4. This is no objection to the power of treaty having a capacity to embrace those objects: (First.) Because that latitude is essential to the great ends for which the power is instituted. (Second.) Because, unless the power of treaty can embrace objects upon which the legislative power may also act, it is essentially nugatory, often inadequate to mere treaties of peace, always inadequate to treaties of alliance or commerce. (Third.) Because it is the office of the legislative power to establish separate rules of action for the nation of which it is the organ, its arm being too short to reach a single case in which a common obligatory rule of action for two nations is to be established. (Fourth.) Because, inasmuch as a common rule of action for independent nations can only be established by compact, it necessarily is of the office of the power of treaty to effect its establishment. (Fifth.) Because the power of legislation being unable to effect what the power of treaty must effect, it is unreasonable to suppose that the former was intended to exclude the action of the latter. (Sixth.) Because, on the other hand, there is no incongruity in the supposition that the power of treaty in establishing a joint rule of action with another nation may act upon the same subject which

the legislative power may act upon in establishing a separate rule of action for one nation. (Seventh.) Because it is a common case for the different powers of government to act upon the same subject within different spheres and in different modes. Thus the legislative power lays and provides for the collection of a particular tax; the executive power collects the tax and brings it into the treasury. So the treaty power may stipulate a pecuniary indemnification for an injury, and the legislative power may execute the stipulation by providing and designating the fund out of which the indemnification shall be made. As in the first instance the executive power is auxiliary to the legislative, so in the last the legislative power is auxiliary to the treaty powers. (Eighth.) Because this document leads to no collision of powers, inasmuch as the stipulations of a treaty may reasonably be considered as restraints upon the legislative discretion. Those stipulations operate by pledging the faith of a nation and restricting its will by the force of moral obligation, and it is a fundamental principle of social right that the will of a nation, as well as that of an individual, may be bound by the moral obligation of a contract. (Ninth.) Because the organ of the power of treaty is as truly the organ of the will of a nation as that of its legislative power; and there is no incongruity in the supposition that the will of a nation acting through one organ may be bound by the pledge of its faith through another organ. From these different views of the subject it results that the position—that the power of legislation acting in one sphere, and the power of

treaty acting in another sphere, may embrace in their action the same objects—involves no interference of constitutional powers; and, of course, that the latter may reach and comprehend objects which the former is authorized to act upon; which it is necessary to suppose it does do, since the contrary supposition would essentially destroy the power of treaty: whereas the stipulations of treaties being only particular exceptions to the discretion of the legislative power, this power will always still have a wide field of action beyond and out of the exceptions.

The latitude of the power of treaty granted by analogous terms in the articles of our late confederation, as practised upon for years in treaties with several foreign powers, and acquiesced in by the government and citizens of these States, is an unequivocal comment upon the meaning of the provision of our present Constitution, and a conclusive evidence of the sense in which it was understood by those who planned and by those who adopted that Constitution—supporting fully the construction of the power here advocated. That latitude could derive no aid from the circumstance of all the powers of the confederation being vested in one body, for that body had very little legislative power, and none in several important particulars which were actually embraced by our treaties. The examples of practice under our present government, without the least question of their propriety, is a further corroboration of the intended and accepted sense of the constitutional instrument, agreeing with the foregoing construction.

The negative of the second question above stated is supported by these considerations.

First.—A discretionary right of assent in the House of Representatives (as before shown) would contradict the two important provisions of the Constitution; that the President with the Senate shall have power to make treaties; that the treaties so made shall be laws.

Secondly.—It supposes the House of Representatives at liberty to contravene the faith of the nation engaged in a treaty made by the declared constitutional agents of the nation for that purpose, and thus implies the contradiction that a nation may rightfully pledge its faith through one organ, and without any change of circumstances to dissolve the obligation, may revoke the pledge through another organ.

Thirdly.—The obvious import of the terms which grant the power of treaty can only be controlled, if at all, by some manifest necessary implication in favor of the discretionary right which has been mentioned. But it has been seen that no such implication can be derived from the mere grant of certain powers to the House of Representatives in common with the other branch of the legislative body. As there is a rational construction which renders the due exercise of these powers in the cases to which they are competent, compatible with the operation of the power of treaty, in all the necessary latitude, excluding the discretionary co-operation of the House of Representatives, that construction is to be preferred. It is far more natural to consider the exercise of those powers as liable to the exceptions which

the power of treaty granted to the President and Senate may make, than to infer from them a right in the House to share in this power in opposition to terms of the grant, and without a single expression in the Constitution to designate the right. It is improbable that the Constitution intended to vest in the House of Representatives so extensive a control over treaties without a single phrase that would look directly to the object. It is the more improbable, because the Senate being, in the first instance, a party to treaties, the right of discretionary co-operation in the House of Representatives, in virtue of its legislative character, would, in fact, terminate in itself, though but a part of the legislative body—which suggests this question, Can the House of Representatives have any right in virtue of its *general* legislative character, which is not effectually participated by the Senate?

Fourthly.—The claim of such a right on the ground that the legislative power is essentially deliberative, that whenever its agency is in question it has a right to act or not, and that, consequently, when provision by law is requisite to execute a treaty there is liberty to refuse it, cannot be acceded to without admitting in the legislative body, and in each part of it an absolute discretion uncontrollable by any constitutional injunctions, limits, or restrictions, thereby overturning the fabric of a fixed and definite Constitution, and erecting upon its ruins a legislative omnipotence.

It would, for example, give to Congress a discretion to allow or not a fixed compensation to the judges, though the Constitution expressly enjoins

"that they shall at stated times receive for their services a compensation, which shall not be diminished during their continuance in office"; and would sacrifice this solemn and peremptory command of the Constitution to the opinion of Congress respecting a more essential application of the public money. Can this be true? Can any thing but absolute inability excuse a compliance with this injunction, and does not the Constitution presuppose a moral impossibility of such inability? If there be a legal discretion in any case to contravene this injunction, what limit is there to the legal discretion of the legislative body? What injunction, what restriction of the Constitution may they not supersede? If the Constitution cannot direct the exercise of their authority in particular cases, how can it limit it in any? What becomes of the appeal to our courts on the constitutionality of a legislative act? What becomes of the power they solemnly assert to test such an act by the constitutional commission, and to pronounce it operative or null, according to its conformity with or repugnance to that commission? What, in fine, becomes of the Constitution itself?

This inquiry suggests a truth fundamental to the principles of our government, and all important to the security of the people of the United States—namely, that the legislative body is not deliberative in all cases; that it is only deliberative and discretionary where the Constitution and the laws lay it under no command nor prohibition; that where they command, it can only execute; where they prohibit, it cannot act. If the thing be commanded and the

means of execution are undefined, it may then deliberate on the choice of the means, but it is obliged to devise some means. It is true that the Constitution provides no method of compelling the legislative body to act, but it is not the less under a constitutional, legal, and moral obligation to act, where action is prescribed, and in conformity with the rule of action prescribed.

In asserting the authority of laws as well as of the Constitution to direct and restrain the legislative action, the position is to be understood with this difference. The Constitution obliges always—the laws till they are annulled or repealed by the proper authority; but till then they oblige the legislative body as well as individuals, and all their antecedent effects are valid and binding. And the abrogation or repeal of a law must be by an act of the regular organ of the national will for that purpose, in the forms of the Constitution,—not by a mere refusal to give effect to its injunctions and requisitions; especially by a part of the legislative body. A legal discretion to refuse the execution of a pre-existing law is virtually a power to repeal it, and to attribute this discretion to a part of the legislative body is to attribute to it the whole, instead of a part, of the legislative power in the given case. When towards the execution of an antecedent law, further legislative provision is necessary, the past effects of the law are obligatory, and a positive repeal or suspension by the whole Legislature is requisite to arrest its future operation. The idea is essential in a government like ours, that there is no body of men or

individuals above the law; not even the legislative body, till by an act of legislation they have annulled the law.

The argument from the principle of an essentially deliberative faculty in the legislative body is the less admissible, because it would result from it that the nation could never be conclusively bound by a treaty. Why should the inherent discretion of a future Legislature be more bound by the assent of a preceding one, than this was by a pledge of the public faith through the President and Senate? Even the Senate itself, after having assented to a treaty by two thirds in one capacity, might in another, by a bare majority, refuse to execute; a contradiction not to be vindicated by any just theory.

Hence it follows that the House of Representatives have no moral power to refuse the execution of a treaty which is not contrary to the Constitution, because it pledges the public faith; and have no legal power to refuse its execution, because it is a law, until at least it ceases to be a law by a regular act of revocation of the competent authority.

The ingredient peculiar to our Constitution in that provision which declares that treaties are laws, is of no inconsiderable weight in the question. It is one thing, whether a treaty pledging the faith of the nation shall, by force of moral duty, oblige the legislative will to carry it into effect; another, whether it shall be of itself a law. The last is the case in our Constitution, which, by a fundamental decree, gives the character of a law to every treaty made under the authority which it designates. Treaties, therefore,

in our government, of themselves, and without any additional sanction, have full legal perfection as laws.

Questions may be made as to the cases in which, and the authority by which, under our Constitution, a treaty consonant with it may be pronounced to have lost or may be divested of its obligatory force; a point not necessary now to be discussed. But admitting that authority to reside in the legislative body, still its exercise must be by an act of Congress declaring the fact and the consequence, or declaring war against the power with whom the treaty is. There is perceived to be nothing in our Constitution, no rule of constitutional law to authorize one branch alone, or the House of Representatives in particular, to pronounce the existence of such cases, or from the beginning to refuse compliance with such a treaty, without any new events to change the original obligation. A right in the whole legislative body (in our Constitution the two houses of Congress), by a collective act, to pronounce the non-operation or nullity of a treaty, satisfies every claim in favor of the legislative power, and gives to it all the weight and efficacy which is reconcilable with the due operation of the treaty power.

How discordant might be the results of a doctrine that the House of Representatives may at discretion execute or not a constitutional treaty! What confusion, if our courts of justice should recognize and enforce as laws treaties, the obligation of which was denied by the House of Representatives, and that on a principle of inherent discretion, which no decision of

the courts could guide! We might see our commercial and fiscal systems disorganized by the breaches made in antecedent laws by posterior treaties, through the want of some collateral provisions requisite to give due effect to the principle of the new rule. Can that doctrine be true which may present a treaty operating as a law upon all the citizens of a country, and yet legally disregarded by a portion of the legislative body?

The sound conclusion appears to be, that when a treaty contains nothing but what the Constitution permits, it is conclusive upon *all*, and *all* are bound to give it effect. When it contains more than the Constitution permits, it is void either in the whole, or as to so much as it improperly contains. While I can discover no sufficient foundation in the Constitution for the claim of a discretionary right in the House of Representatives to participate in giving validity to treaties, I am confirmed in the contrary inference by the knowledge I have that the expediency of this participation was considered by the convention which planned the Constitution, and was by them overruled.

The greatness of the power of treaty under this construction is no objection to its truth. It is doubtless a great power, and necessarily so, else it could not answer those purposes of national security and interest in the external relations of a country for which it is designed. Nor does the manner in which it is granted in our Constitution furnish any argument against the magnitude which is ascribed to it, but the contrary. A treaty cannot be made without

the actual co-operation and mutual consent of the Executive and two thirds of the Senate. This necessity of positive co-operation of the Executive charges him with a high responsibility, which cannot but be one great security for the proper exercise of the power. The proportion of the Senate requisite to their valid consent to a treaty approaches so near to unanimity, that it would always be very extraordinary if it should be given to one really pernicious or hurtful to the state. These great guards are manifest indications of a great power being meant to be deposited. So that the manner of its deposit is an argument for its magnitude rather than an argument against it, and an argument against the intention to admit with a view to security the discretionary co-operation of the House of Representatives rather than in favor of such a right in them.

Two thirds of the two houses of Congress may exercise their whole legislative power not only without but against the consent of the Executive. It is not evident on general principles that in this arrangement there is a materially greater security against a bad law than in the other against a bad treaty. The frequent absolute necessity of secrecy not only in the conduct of a foreign negotiation, but at certain conjunctures, as to the very articles of a treaty, is a natural reason why a part, and that the least numerous part, of the legislative body was united with the Executive in the making of treaties in exclusion of the other and the most numerous. But if the deposit of the power of treaty was less safe, and less

well guarded than it is conceived to be, this would not be a good argument against its being in fact exclusively deposited as the terms of the Constitution, which establish it, import it to be. It would only be an argument for an amendment to the Constitution modifying the deposit of the power differently, and superadding new guards.

If the House of Representatives, called upon to act in aid of a treaty made by the President and Senate, believe it to be unwarranted by the Constitution which they are sworn to support, it will not be denied that they may pause in the execution until a decision on the point of constitutionality in the Supreme Court of the United States shall have settled the question.

But this is the only discretion of that house, as to the obligation to carry a treaty made by the President and Senate into effect, in the existence of which I can acquiesce as being within the intent of the Constitution.

Hence there was no question, in my opinion, of the competency of the House of Representatives, which I could presuppose likely to arise, to which any of the papers now requested could be deemed applicable; nor does it yet appear that any such question has arisen, upon which the request has been predicated.

Were even the course of reasoning which I have pursued less well founded than it appears to me to be, the call for papers as a preliminary proceeding of the house would still seem to be premature.

A question on the constitutionality of a treaty can

manifestly only be decided by comparing the instrument itself with the Constitution.

A question whether a treaty be consistent with or adverse to the interests of the United States, must likewise be decided by comparing the stipulations which it actually contains with the situation of the United States in their internal and external relations.

Nothing extrinsic to the treaty, or in the manner of its negotiation, can make it constitutional or unconstitutional, good or bad, salutary or pernicious. The internal evidence it affords is the only proper standard of its merits.

Whatever therefore be the nature of the duty, or discretion of the House, as to the execution of the treaty, it will find its rule of action in the treaty.

Even with reference to and animadversion on the conduct of the agents who made the treaty, the presumption of a criminal mismanagement of the interests of the United States ought first, it is conceived, to be deduced from the intrinsic nature of the treaty, and ought to be pronounced to exist prior to a further inquiry to ascertain the guilt and the guilty. Whenever the House of Representatives, proceeding upon any treaty, shall have taken the ground that such a presumption exists, in order to such an inquiry, their request to the Executive to be caused to be laid before them papers which may contain information on the subject, will rest on a foundation that cannot fail to secure to it due efficacy.

But, under all the circumstances of the present request(circumstances which I forbear to particularize), and in its present indefinite form, I adopt with re-

luctance and regret, but with entire conviction, the opinion, that a just regard to the Constitution and to the duty of my office forbids on my part a compliance with that request.

FAREWELL ADDRESS[1]

ABSTRACT OF POINTS TO FORM AN ADDRESS[2]

1796.

I.—The period of a new election approaching, it is his duty to announce his intention to decline.

II.—He had hoped that long ere this it would have been in his power, and particularly had nearly come to a final resolution in the year 1792 to do it, but the peculiar situation of affairs, and the advice of confidential friends, dissuaded.

III.—In acquiescing in a further election he still hoped a year or two longer would have enabled him to withdraw, but a continuance of causes has delayed till now, when the position of our country, abroad and at home, justify him in pursuing his inclination.

IV.—In doing it he has not been unmindful of his relation as a dutiful citizen to his country, nor is now influenced by the smallest diminution of zeal for its interest or gratitude for its past kindness, but by a belief that the step is compatible with both.

V.—The impressions under which he first accepted were explained on the proper occasion.

[1] See note to next paper, "Washington's Farewell Address."

[2] This endorsement, together with the whole of this paper, is copied from a draft in Hamilton's hand.

VI.—In the execution of it he has contributed the best exertions of a very fallible judgment—anticipated his insufficiency—experienced his disqualifications for the difficult trust, and every day a stronger sentiment from that cause to yield the place—advance into the decline of life—every day more sensible of weight of years, of the necessity of repose, of the duty to seek retirement, etc.

VII.—It will be among the purest enjoyments which can sweeten the remnant of his days, to partake in a private station, in the midst of his fellow-citizens, the laws of a free government, the ultimate object of his cares and wishes.

VIII.—As to rotation.

IX.—In contemplating the moment of retreat, cannot forbear to express his deep acknowledgments and debt of gratitude for the many honors conferred on him—the steady confidence which, even amidst discouraging scenes and efforts to poison its source, has adhered to support him, and enabled him to be useful—marking, if well placed, the virtue and wisdom of his countrymen. All the return he can now make must be in the vows he will carry with him to his retirement: 1st, for a continuance of the Divine beneficence to his country; 2d, for the perpetuity of their union and brotherly affection—for a good administration insured by a happy union of watchfulness and confidence; 3d, that happiness of people under auspices of liberty may be complete; 4th, that by a prudent use of the blessing they may recommend to the affection, the praise, and the adoption of every nation yet a stranger to it.

X.—Perhaps here he ought to end. But an unconquerable solicitude for the happiness of his country will not permit him to leave the scene without availing himself of whatever confidence may remain in him, to strengthen some sentiments which he believes to be essential to their happiness, and to recommend some rules of conduct, the importance of which his own experience has more than ever impressed upon him.

XI.—To consider the Union as the rock of their salvation, presenting summarily these ideas:

1. The strength and greater security from external danger.
2. Internal peace, and avoiding the necessity of establishments dangerous to liberty.
3. Avoids the effect of foreign intrigue.
4. Breaks the force of faction by rendering combinations more difficult.

Fitness of the parts for each other by their very discriminations:

1. The North, by its capacity for maritime strength and manufacture.
2. The agricultural South furnishing materials and requiring those protections.

The Atlantic board to the western country by the strong interest of peace, and

The Western, by the necessity of Atlantic maritime protection.

Cannot be secure of their great outlet otherwise—cannot trust a foreign connection.

Solid interests invite to Union. Speculation of

difficulty of government ought not to be indulged, nor momentary jealousies—lead to impatience.

Faction and individual ambition are the only advisers of disunion.

Let confidence be cherished. Let the recent experience of the West be a lesson against impatience and distrust.

XII.—Cherish the actual government. It is the government of our own choice, free in its principles, the guardian of our common rights, the patron of our common interests, and containing within itself a provision for its own amendment.

But let that provision be cautiously used—not abused; changing only in any material points as experience shall direct; neither indulging speculations of too much or too little force in the system; and remembering always the extent of our country.

Time and habit of great consequence to every government of whatever structure.

Discourage the spirit of faction, the bane of free government; and particularly avoid founding it on geographical discriminations. Discountenance slander of public men. Let the departments of government avoid interfering and mutual encroachment.

XIII.—Morals, religion, industry, commerce, economy.

Cherish public credit—source of strength and security.

Adherence to systematic views.

XIV.—Cherish good faith, justice, and peace with other nations:

1. Because religion and morality dictate it.

2. Because policy dictates it.

If these could exist, a nation invariably honest and faithful, the benefits would be immense.

But avoid national antipathies or national attachments.

Display the evils; fertile source of wars — instrument of *ambitious rulers.*

XV.—Republics peculiarly exposed to foreign intrigue, those sentiments lay them open to it.

XVI.—The great rule of our foreign politics ought to be to have as little political connection as possible with foreign nations.

Cultivating commerce with all by gentle and natural means, diffusing and diversifying it, but *forcing nothing*—and cherish the sentiment of *independence,* taking pride in the appellation of American.

XVII.—Our separation from Europe renders standing alliances inexpedient—subjecting our peace and interest to the primary and complicated relations of European interests.

Keeping constantly in view to place ourselves upon a respectable *defensive,* and if forced into controversy, trusting to connections of the occasion.

XVIII.—Our attitude imposing and rendering this policy safe.

But this must be with the exception of existing engagements, to be preserved but not extended.

XIX.—It is not expected that these admonitions can control the course of the human passions, but if they only moderate them in some instances, and now and then excite the reflections of virtuous men heated by party spirit, my endeavor is rewarded.

XX.—How far in the administration of my present office my conduct has conformed to these principles, the public records must witness. My conscience assures me that I believed myself to be guided by them.

XXI.—Particularly in relation to the present war, the proclamation of the 22d of April, 1793, is the key to my plan.

Approved by your voice and that of your representatives in Congress, the spirit of that measure has continually guided me, uninfluenced by, and regardless of, the complaints and attempts of any of the powers at war or their partisans to change them.

I thought our country had a right under all the circumstances to take this ground, and I was resolved, as far as depended on me, to maintain it firmly.

XXII.—However, in reviewing the course of my administration, I may be unconscious of intentional errors, I am too sensible of my own deficiencies not to believe that I may have fallen into many. I deprecate the evils to which they may tend, and pray Heaven to avert or mitigate and abridge them. I carry with me, nevertheless, the hope that my motives will continue to be viewed with indulgence; that after forty-five years of my life devoted to public service, with a good zeal and upright views, the faults of deficient abilities will be consigned to oblivion, as myself must soon be to the mansions of rest.

XXIII.—Neither interest nor ambition has been my impelling motive. I never abused the power confided to me. I have not bettered my fortune, retiring with it, no otherwise improved than by the

influence on property of the common blessings of my country. I retire with undefiled hands and an uncorrupted heart, and with ardent vows for the welfare of that country, which has been the native soil of myself and my ancestors for *four generations.*

WASHINGTON'S FAREWELL ADDRESS[1]

"Original Draft" by Hamilton.[2]

August, 1796.

The period for a new election of a citizen to administer the executive government of the United States being not very distant, and the time actually

[1] The question of the authorship of the Farewell Address has been discussed with the utmost ability by Horace Binney in his *Inquiry into the Formation of Washington's Farewell Address.* That masterly argument, in every way worthy of its distinguished author, finally settled all doubts or questionings on the subject, and to it every one interested in the matter must be referred. It is only needful here to give a bare outline of the facts in the case.

In 1792, Washington, contemplating withdrawal from public life, sent Madison certain suggestions and asked him to put them into the form of an address. This Madison did very briefly, confining himself to the points given him by Washington. As Washington decided to accept a second term the paper was not used. In 1796 Washington sent to Hamilton the draft by Madison, together with certain additional paragraphs of his own, which made, as Mr. Binney said, the "soul of the address." These two papers constituted Washington's original draft, and Hamilton was requested to "*re-dress*" it. Hamilton, first incorporating these suggestions in the "abstract of points" just given, and adhering strictly to the lines marked out by Washington, made an entirely new draft of his own. This may be called Hamilton's original draft, which was sent to Washington at once. Hamilton then took Washington's original draft and consulted Jay in regard to it. The result of this conference was that Hamilton drew up a paper of changes

[2] This is a copy of the original draft in Hamilton's autograph. The notes embrace the *final* alterations in *this* draft—but there are many previous erasures which can only be given in a fac-simile.

arrived when your thoughts must be employed in designating the person who is to be clothed with that important trust for another term, it appears to me proper, and especially as it may conduce to a more distinct expression of the public voice, that I should now apprise you of the resolution I have formed to

and corrections which he sent back to Washington together with the latter's original draft. Washington compared the three papers with his customary care, and then wrote that he greatly preferred Hamilton's original draft, and returned it to the author for certain changes including the addition of a paragraph on education, and asked that it be put in shape for the press. Hamilton, therefore, wrote a second draft, which may be called "Hamilton's revision," and sent it to Washington, September 1, 1796. Washington then made an autograph copy of the revision, cancelled all those passages which he had told Hamilton he should expunge, and on Sept. 17th the "Farewell Address" was given to the world. Washington kept with wonted care every paper relating to the Farewell Address, but "Hamilton's revision" has disappeared. The circumstances connected with this disappearance are suspicious, but as Hamilton preserved his original draft, the suppression of the revision, if there was any evil intention in the matter, failed of its purpose. The original draft of Hamilton shows beyond question the hand which gave form to the Farewell Address. The differences between that draft and the Farewell Address are such as would have been made in the revision, except as to the cancelled passages which Washington cut out in bulk as he originally proposed. Jay's argument, written in 1811, carries its own refutation, for he cites as a proof of his theory that Washington alone could with propriety write such a paper, a passage which is taken word for word from Madison's draft of 1792. Mr. Binney's conclusion is unavoidable. The thoughts and the general idea of the Farewell Address are all Washington's. The form, the arrangement, and the method of argument are Hamilton's. No edition of Hamilton's works would be complete without showing in some degree the share which he had in this famous paper. I have, therefore, printed here as best adapted for this purpose two documents. The first is the abstract of points just given, which was made by Hamilton for his own use and drawn from Washington's original draft composed of Madison's sketch and his own additional suggestions. The other is Hamilton's original draft. These papers can be readily compared with the Farewell Address as it finally appeared, and in this way Hamilton's share in this great state paper is at once apparent. In the private correspond-

decline being considered among the number of those out of whom a choice is to be made.

I beg you, nevertheless,[1] to be assured that the resolution which I announce has not been taken without a strict regard to all the considerations attached to[2] the relation which, as a dutiful citizen, I bear[3] to my[4] country, and that in withdrawing the tender of my service, which silence in my situation might imply, I am influenced by no diminution of zeal for its future interest, nor by any deficiency of grateful respect for its past kindness, but by a full conviction that such a step is compatible with both.

The acceptance of, and the continuance hitherto in the office to which your suffrages have twice called me, has been a uniform sacrifice of private inclination to[5] the opinion of public duty coinciding with what appeared to be your wishes. I had constantly hoped that it would have been much earlier in my power, consistently with motives which I was not at liberty to disregard, to return to that retirement from which *those*[6] *motives* had reluctantly drawn me.

The strength of my desire to withdraw previous to the last election, had even led to the preparation of

ence in this edition, all Hamilton's letters on the subject will be found printed, in conjunction with those of Washington, for the first time.

All the important documents are given in Mr. Binney's *Inquiry*, but the appendix to Irving's *Life of Washington* (vol. v.), the appendix to Sparks' edition of the *Writings of Washington* (vol. xii.), and Hamilton's *History of the Republic* (vol. vi., p. 492), should also be consulted by every one desiring the fullest information.

[1] at the same time. [2] connected with—inseparable from—incident to.

[3] bears. [4] his. [5] combined with a deference for. [6] they.

an address to declare it to you, but deliberate [1] reflection on the very critical and perplexed posture of our affairs with foreign nations, and the unanimous advice of men [2] every way entitled to my confidence, obliged [3] me to abandon the idea.

I rejoice that the state of your national concerns, external as well as internal, no longer renders the pursuit of my inclination incompatible with the sentiment of duty or propriety, and [4] that whatever partiality any portion of you may still retain for my services, they, under the existing circumstances of our country, will not disapprove the [5] resolution [6] I have formed.

The impressions under which I first accepted the arduous trust of Chief Magistrate of the United States, were explained on the proper occasion. In the discharge of this trust, I can only say that I have, with pure intentions, contributed towards the organization and administration of the government the best exertions of which a very fallible judgment was capable; that conscious at [7] the outset of the inferiority of my qualifications for the station, experience in my own eyes, and perhaps still more in those of others, has not diminished in me the diffidence of myself—and every day the increasing weight of years admonishes me more and more that the shade of retirement is as necessary [8] as it will be welcome to me. Satisfied that if any circumstances have given a peculiar value to my services, they were temporary, I have the consolation to believe that

[1] mature. [2] persons. [3] impelled. [4] whatever.
[5] my. [6] to retire. [7] in. [8] to me.

while inclination and prudence urge me to recede from the political scene, patriotism does not forbid it. May I also have that of knowing in my retreat,[1] that the involuntary errors which I have probably committed have been the causes of no serious or lasting mischief to my country, and thus be spared the anguish of regrets which would disturb the repose of my retreat and embitter the remnant of my life! I may then expect to realize, without alloy, the pure enjoyment of partaking, in the midst of my fellow-citizens, of the benign influence of good laws under a free government; the ultimate object of all my wishes, and to which I look as the happy reward[2] of our mutual labors and dangers.

In looking forward to the moment which is to terminate the career of my public life, my sensations do not permit me to suspend the deep acknowledgments required by that debt of gratitude, which I owe to my beloved country, for the many honors it has conferred upon me, still more for the distinguished and steadfast confidence it has reposed in me, and for the opportunities it has thus afforded me[3] of manifesting my inviolable attachment, by services faithful and persevering—however the inadequateness of my faculties may have ill seconded my[4] zeal. If benefits have resulted to you, my fellow-citizens, from these services, let it always be remembered to your praise, and as an instructive example in our annals, that the constancy of your support amidst

[1] retirement. [2] I hope. [3] I have thence enjoyed.
[4] have rendered their efforts unequal to my—disproportional.

appearances [1] dubious, vicissitudes of fortune often discouraging, and in situations in which, not unfrequently, want of success has seconded the criticisms of malevolence,[2] was the essential prop of the efforts and the guaranty of the measures by which they were achieved.

Profoundly penetrated with this idea, I shall carry it with me to my retirement, and to my grave, as a lively incitement to unceasing vows (the only returns I can henceforth make) that Heaven may continue to you the choicest tokens of its beneficence, merited by national piety and morality; that your union and brotherly affection may be perpetual; that the free Constitution, which is the work of your own hands, may be sacredly maintained; that its administration in every department may be stamped with wisdom and virtue; that, in fine, the happiness of the people of these States under the auspices of liberty may be made complete, by so careful a preservation, and so prudent a use of this blessing, as will acquire them the glorious satisfaction of recommending it to the affection, the praise, and the adoption of every nation which is yet a stranger to it.

Here, perhaps, I ought to stop; but a solicitude for your welfare, which cannot end but with my life, and the fear that there may exist projects unfriendly to it, against which it may be necessary you should be guarded, urge me in taking leave of you to offer to your solemn consideration and frequent review,

[1] under circumstances in which the passions, agitated in every direction, were liable to the greatest fluctuations. [2] sometimes.

some sentiments, the result of mature reflection confirmed by observation and experience, which appear to me essential to the permanency of your felicity as a people. These will be offered with the more freedom, as you can only see in them the disinterested advice of a parting friend, who can have no personal motive to tincture or bias his counsel.

Interwoven as is the love of liberty with every fibre of your hearts, no recommendation is necessary to fortify your attachment TO IT. Next to this, that unity of government which constitutes you as one people, claims your vigilant care and guardianship—as a main pillar of your real independence, of your peace, safety, freedom, and happiness.

This being the point in your political fortress against which the batteries of internal and external enemies will be most constantly and actively, however covertly and insidiously levelled, it is of the utmost importance that you should appreciate, in its full force, the immense value of your political union to your national and individual happiness—that you should cherish towards it an affectionate and immovable attachment, and that you should watch for its preservation with zealous solicitude.

For this, you have every motive of sympathy and interest. Children for the most part of a common country, that country claims and ought to concentrate your affections. The name of American must always gratify and exalt the just pride of patriotism more than any denomination which can be derived from local discriminations. You have, with slight shades of difference, the same religion, manners,

habits, and political institutions and principles; you have, in a common cause, fought and triumphed together. The independence and liberty you enjoy are the work of joint councils, efforts, dangers, sufferings, and successes. By your union you have achieved them, by your union you will most effectually maintain them.

The considerations which address themselves to your sensibility are greatly [1] strengthened [2] by those which apply to your interest. Here, every portion of our country will find the most urgent and commanding motives for guarding and preserving the union of the whole.

The North, in [3] intercourse with the South, under the equal laws of one government, will, in the productions of the latter, many of them peculiar, find vast additional resources of maritime and commercial enterprise.[4] The South, in the same intercourse, will share in the benefits of the agency of the North, will find its agriculture promoted and its commerce extended by turning into its own channels those means of navigation which the North more abundantly affords; and while it contributes to extend the national navigation, will participate in the protection of a maritime strength to which itself is unequally adapted. The East, in a like intercourse with the West, finds [5] a valuable vent for the commodities which it brings from abroad or manufactures at home. The West derives through this channel

[1] even. [2] outweighed. [3] free and unfettered.

[4] and precious materials of their manufacturing industry.

[5] and in the progressive improvement of internal navigation will more and more find.

an essential supply of its wants; and what is far more important to it, it must owe the secure and permanent enjoyment of the indispensable outlets for its own productions to the weight, influence, and maritime resources of the Atlantic States.[1] The tenure by which it could hold this advantage, either from its own separate strength, or by an apostate and unnatural connection with any foreign nation, must be intrinsically and necessarily precarious, at every moment liable to be disturbed by the [2] combinations of those primary [3] interests which constantly regulate the conduct of every portion of Europe—and where every part finds a particular interest in the Union. All the parts of our country will find in their Union [4] strength, proportional security from external danger, less frequent interruption of their peace with foreign nations; and what is far more valuable, an exemption from those broils and wars between the parts if disunited, which, then, our rivalships, fomented by foreign intrigue or the opposite alliances with foreign nations engendered by their mutual jealousies, would inevitably produce.[5]

These considerations speak a conclusive language to every virtuous and considerate mind. They place

[1] directed by an indissoluble community of interests.

[2] fluctuating.

[3] European.

[4] greater independence from the superior abundance and variety of production incident to the diversity of soil and climate. All the parts of it must find in the aggregate assemblage and reaction of their mutual population—production.

[5] consequent exemption from the necessity of those military establishments upon a large scale which bear in every country so menacing an aspect towards liberty.

the continuance of our union among the first objects of patriotic desire. Is there a doubt whether a common government can long embrace so extensive a sphere? Let time and experience decide the question. Speculation in such a case ought not to be listened to. And 't is rational to hope that the auxiliary [1] governments of the subdivisions, with a proper organization of the whole, will secure a favorable issue to the experiment. 'T is allowable to believe that the spirit of party, the intrigues of foreign nations, the corruption and the ambition of individuals, are likely to prove more formidable adversaries to the unity of our empire, than any inherent difficulties in the scheme. 'T is against these that the guards [2] of national opinion, national sympathy, national prudence and virtue, are to be erected. With such obvious motives to union, there will be always cause from the fact itself to distrust the patriotism of those who [3] may endeavor to weaken its bands. And by all the love I bear you, my fellow-citizens, I conjure [4] you, as often as [5] it appears, to frown upon the attempt.

Besides the more serious causes which have been hinted at as endangering our Union, there is another less dangerous, but against which it is necessary to be on our guard; I mean the petulance of party [6] differences of opinion. It is not uncommon to hear the irritations which these excite, vent themselves in declarations that the different parts of the Union are ill assorted and cannot remain together—in

[1] agency of. [3] in any quarter. [5] "often"—instead of "far."
[2] mounds. [4] exhort—(*written first*). [6] collisions and disgusts.

menaces from the inhabitants of one part to those of another, that it will be dissolved by this or that measure. Intimations of the kind are as indiscreet as they are intemperate. Though frequently made with levity and without being in earnest, they have a tendency to produce the consequence which they indicate. They teach the minds of men to consider the Union as precarious, as an object to which they are not to attach their hopes and fortunes, and thus weaken the sentiment in its favor. By rousing the resentment and alarming the pride of those to whom they are addressed, they set ingenuity to work to deprecate the value of the object, and to discover motives of indifference to it. This is not wise. Prudence demands that we should habituate ourselves in all our words and actions to reverence the Union as a sacred and inviolable palladium of our happiness, and should discountenance whatever can lead to a suspicion that it can in any event be abandoned.

'T is matter of serious concern that parties in this country for some time past have been too much characterized by geographical discriminations—northern and southern States, Atlantic and western country. These discriminations,[1] which are the mere artifice of the spirit of party (always dexterous to avail itself of every source of sympathy,[2] of every handle by which the passions can be taken hold of, and which has been careful to turn to account the circumstance of territorial vicinity [3]), have furnished an argument against the Union as evidence of a real difference of local interests and views, and serve to

[1] of party. [2] sympathy of. [3] neighborhood.

hazard it by organizing large districts of country under the direction of [1] different factions whose passions and prejudices, rather than the true interests of the country, will be too apt to regulate the use of their influence. If it be possible to correct this poison in the affairs of our country, it is worthy the best endeavors of moderate and virtuous men to effect it.

One of the expedients which the partisans of faction employ towards strengthening their influence by local discriminations,[2] is to misrepresent the opinions and views of rival districts. The people at large cannot be too much on their guard against the jealousies which grow out of these misrepresentations. They tend to render aliens to each other those who ought to be tied together by fraternal affection. The people of the western country have lately had a useful lesson on this subject. They have seen in the negotiation by the Executive, and in the unanimous ratification of the treaty with Spain by the Senate, and in the universal satisfaction at that event in all parts of the country, a decisive proof how unfounded have been the suspicions instilled [3] in them of a policy in the Atlantic States, and in the different departments of the general government, hostile to their interests in relation to the Mississippi. They have seen two treaties formed which secure to them every thing that they could desire to confirm their prosperity. Will they not henceforth rely for the preservation of these advantages on that Union by which they were procured?

[1] the leaders of. [2] within local spheres. [3] propagated among.

Will they not reject those counsellors who would render them alien to their brethren and connect them with aliens?

To the duration and efficacy of your Union, a government extending over the whole is indispensable. No alliances however strict between the parts could be an adequate substitute. These could not fail to be liable to the infractions and interruptions which all alliances in all times have suffered. Sensible of this important truth, you have lately established a Constitution of general government, better calculated than the former for an intimate union, and more adequate to the duration of your common concerns. This government, the offspring of your own choice, uninfluenced and unawed, completely free in its principles, in the distribution of its powers, uniting energy with safety, and containing in itself a provision for its own amendment, is well entitled to your confidence and support. Respect for its authority, compliance with its laws, acquiescence in its measures,[1] are duties dictated by the fundamental maxims of true liberty. The basis of our political systems is the right of the people to make and to alter their constitutions of government. But the Constitution for the time, and until changed by an explicit and authentic act of the whole people, is sacredly binding upon all. The very idea of the right and power of the people to establish government presupposes the duty of every individual to obey the established government.

All obstructions to the execution of the laws—all

[1] ordinary management of affairs to be left to represent.

combinations and *associations* under whatever plausible character, with the real design to counteract,[1] control,[2] or awe the regular [3] action of the constituted authorities, are contrary to this fundamental principle, and of the most fatal tendency. They serve to organize faction,[4] and to put in the stead of the delegated will of the whole nation the will of a party, often a small [5] minority of the whole community; and according to the alternate triumph of different parties to make the public administration reflect the [6] schemes and projects of faction rather than the wholesome plans of common councils and deliberations. However combinations or associations of this description may occasionally promote popular ends and purposes, they are likely to produce, in the course of time and things, the most effectual engines by which artful, ambitious, and unprincipled men will be enabled to subvert the power of the people and usurp the reins of government.

Towards the preservation of your government and the permanency of your present happy state, it is not only requisite that you steadily discountenance irregular oppositions to its authority, but that you should be upon your guard against the spirit of innovation upon its principles, however specious the pretexts. One method of assault may be to effect alterations in the forms of the Constitution tending to impair the energy of the system, and so to undermine what cannot be directly overthrown. In all

[1] direct. [2] influence. [3] deliberation or.
[4] to give it an artificial force. [5] but artful and enterprising.
[6] ill concerted.

the changes to which you may be invited, remember that time and habit are as necessary to fix the true character of governments as of any other human institutions; that experience is the surest standard by which the real tendency of existing constitutions of government can be tried; that changes upon [1] the credit of mere hypothesis and opinion expose you to perpetual change from the successive and endless variety of hypothesis and opinion. And remember also,[2] that for the efficacious management of your common interests, in a country so extensive as ours, a government of as much force and strength as is consistent with the perfect security of liberty is indispensable. Liberty itself will find in such a government, with powers properly distributed and arranged, its surest guardian and protector. In my opinion, the real danger in our system is, that the general government, organized as at present, will prove too weak rather than too powerful.

I have already observed the danger to be apprehended from founding our parties on geographical discriminations. Let me now enlarge the view of this point, and caution you in the most solemn manner against the baneful effects of party spirit in general. This spirit unfortunately is inseparable from human nature, and has its root in the strongest passions of the human heart. It exists under different shapes in all governments, but [3] in those of the popular form it is always seen in its utmost vigor and rankness, and is their worst enemy. In republics of

[1] facility in.
[2] always.
[3] in different degrees stifled, controlled, or repressed.

narrow extent, it is not difficult for those who at any time possess the reins of administration, or even for partial combinations of men, who from birth, riches, and other sources of distinction have an extraordinary influence, by possessing or acquiring the direction of the military force, or by sudden efforts of partisans and followers, to overturn the established order of things, and effect a usurpation. But in republics of large extent, the one or the other is scarcely possible. The powers and opportunities of resistance of a numerous and wide-extended nation defy the successful efforts of the ordinary military force, or of any collections [1] which wealth and patronage may call to their aid, especially if there be no city of overbearing force, resources, and influence. In such republics it is perhaps safe to assert that the conflicts of popular faction offer the only avenues to tyranny and usurpation. The domination of one faction over another, stimulated by that spirit of revenge which is apt to be gradually engendered, and which in different ages and countries has produced the greatest enormities, is itself a frightful despotism. But this leads at length to a more formal and permanent despotism. The disorders and miseries which result predispose the minds of men to seek repose and security in the absolute power of a single man. And the [2] leader of a prevailing faction, more able or more fortunate than his competitors, turns this disposition to the purposes of an ambitious and criminal self-aggrandizement.

Without looking forward to such an extremity

[1] assemblages. [2] some.

(which, however, ought not to be out of sight), the ordinary and continual mischiefs of the spirit of party make it the interest and the duty of a wise people, to discountenance and repress it.

It serves always to distract the councils and enfeeble the administration of the government. It agitates the community with ill-founded jealousies and false alarms.[1] It opens inlets for foreign corruption and influence, which find an easy access through the channels of party passions, and causes the true policy and interest of our own country to be made subservient to the policy and interest of one and another foreign nation, sometimes enslaving our own government to the will of a foreign government.

There is an opinion that parties in free countries are salutary checks upon the administration of the government, and serve to invigorate the spirit of liberty. This, within certain limits, is true; and in governments of a monarchical character or bias, patriotism may look with some favor on the spirit of party. But in those of the popular kind, in those purely elective, it is a spirit not to be fostered or encouraged. From the natural tendency of such governments, it is certain there will always be enough of it for every salutary purpose, and there being constant danger of excess, the effort ought to be, by the force of public opinion, to mitigate and correct it. 'T is a fire which[2] cannot be quenched, but demands[3] a uniform vigilance to prevent its

[1] embittering one part of the community against another, and producing occasionally riot and insurrection.

[2] not to.

[3] demanding.

bursting into a flame—lest it should not only warm but consume.

It is important, likewise, that the habits of thinking of the people should tend to produce caution in their public agents in the several departments of government, to retain each within its proper sphere, and not to permit one to encroach upon another; that every attempt of the kind, from whatever quarter, should meet with the discountenance [1] of the community, and that, in every case in which a precedent of encroachment shall have been given, a corrective be sought in [revocation be effected by] a careful attention to the next choice [2] of public agents. The spirit of encroachment tends to absorb [3] the powers of the several branches and departments into one, and thus to establish, under whatever form, a despotism. A just knowledge of the human heart, of that love of power which predominates in it, is alone sufficient to establish this truth. Experiments, ancient and modern, some in our own country, and under our own eyes, serve to confirm it. If, in the public opinion, the distribution of the constitutional powers be in any instance wrong, or inexpedient, let it be corrected by the authority of the people in a legitimate constitutional course. Let there be no change by usurpation, for though this may be the instrument of good in one instance, it is the ordinary [4] instrument of the destruction [5] of free government—and the influence of the precedent is always infinitely more pernicious

[1] reprobation. [2] election. [3] and consolidate. [4] and natural. [5] death.

than any thing which it may achieve can be beneficial.

In all those dispositions which promote political happiness,[1] religion and morality are essential props. In vain does he [2] claim the praise of patriotism, who labors to subvert or undermine these great pillars of human happiness, these firmest foundations of the duties of men and citizens. The mere politician, equally with the pious man, ought to respect and cherish them. A volume could not trace all their connections with private and public happiness.

Let it simply be asked, where is the security for property, for reputation, for life, if the sense of moral and religious obligation deserts the oaths which are administered [3] in courts of justice? Nor ought we to flatter ourselves that morality can be separated from religion. Concede as much as may be asked to the effect of refined education in minds of peculiar structure, can we believe, can we in prudence suppose, that national morality can be maintained in exclusion of religious principles? Does it not require the aid of a generally received and divinely authoritative religion?

'T is essentially true that virtue or morality is a main and necessary spring of popular or republican governments. The rule, indeed, extends with more or less force to all free governments. Who that is a prudent and sincere friend to them, can look with indifference on the ravages which are making in the foundation of the fabric—religion? The uncommon

[1] prosperity.
[2] that man.
[3] instruments of investigation.

means which of late have been directed to this fatal end, seem to make it in a particular manner the duty of a retiring chief of a nation to warn his country against tasting of the poisonous draught.

Cultivate, also, industry and frugality. They are auxiliaries of good morals, and great sources of private and national prosperity. Is there not room for regret, that our propensity to expense exceeds the maturity of our country for expense? Is there not more luxury among us, in various classes, than suits the actual period of our national progress? Whatever may be the apology for luxury in a country mature in all the arts which are its ministers and the means of national opulence—can it promote the advantage of a young agricultural country, little advanced in manufactures, and not much advanced in wealth? [1]

Cherish public credit as a means of strength and security. As one method of preserving it, use it as little as possible. Avoid occasions of expense by cultivating peace—remembering always that the preparation against danger, by timely and provident disbursements, is often a mean of avoiding greater disbursements to repel it. Avoid the accumulation of debt by avoiding occasions of expense, and by vigorous exertions in time of peace to discharge the debts which unavoidable wars may have occasioned, not transferring to posterity the burthen which we ought to bear ourselves. Recollect, that towards the payment of debts there must be revenue, that to

[1] in the infancy of the arts, and certainly not in the manhood of wealth.

have revenue there must be taxes, that it is impossible to devise taxes which are not more or less inconvenient and unpleasant—that they are always a choice of difficulties, that the intrinsic embarrassment which never fails to attend a selection of objects ought to be a motive for a candid construction of the conduct of the government in making it, and that a spirit of acquiescence in those measures for obtaining revenue which the public exigencies dictate, is, in an especial manner, the duty and interest of the citizens of every state.

Cherish good faith and justice towards, and peace and harmony with, all nations. Religion and morality enjoin this conduct, and it cannot be but that true policy equally demands it. It will be worthy of a free, enlightened, and at no distant period, a great nation, to give to mankind the magnanimous and too novel example of a people invariably governed by [1] those exalted views. Who can doubt that in a long course of time and events the fruits of such a conduct would richly repay any temporary advantages which might be lost by a steady adherence to the plan? Can it be that Providence has not connected the permanent felicity of a nation with its virtue? The experiment is recommended by every sentiment which ennobles human nature. Alas! is it rendered impossible by its vices?

Towards the execution of such a plan,[2] nothing is more essential than that [3] antipathies against par-

[1] exalted justice and benevolence.

[2] it is very material.

[3] that while we entertain proper impressions of particular cases—of friendly or unfriendly conduct of different foreign nations towards us,

ticular nations and passionate attachments for others should be avoided, and that instead of them we should cultivate just and amicable feelings towards all. * * * That nation which indulges towards another an habitual hatred or an habitual fondness, is in some degree a slave. * * * It is a slave to its animosity, or to its affection—either of which is sufficient to lead it astray from its duty and interest. Antipathy against one nation, which never fails to beget a similar sentiment in the other, disposes each more readily to offer injury and insult to the other, to lay hold of slight causes of umbrage, and to be haughty and untractable when accidental or trifling differences arise. Hence frequent quarrels [1] and bitter and obstinate contests. The nation urged by resentment and rage, sometimes compels the government to war, contrary to its own calculations of policy. The government sometimes participates in this propensity, and does through passion what reason would forbid at other times; it makes the animosity of the nations subservient to hostile projects which originate in ambition and other sinister motives. The peace, often, and sometimes the liberty of nations, has been the victim of this cause.

In like manner [2] a passionate attachment of one nation to another produces multiplied ills. Sympathy for the favorite nation, promoting [3] the illusion of a supposed common interest, in cases where it does not exist,[4] the enmities of the one betray the

we nevertheless avoid fixed and rooted antipathies against any, or passionate attachments for any, instead of these cultivating, as a general rule, just and amicable feelings towards all.

[1] broils. [2] So likewise. [3] facilitating. [4] and communicating to one.

other into a participation in its quarrels and wars, without adequate inducements or justifications. It leads to the concession of privileges to one nation, and to the denial of them to others, which is apt doubly to injure the nation making the concession by an unnecessary yielding of what ought to have been retained, and by exciting jealousy, ill-will, and retaliation in the party from whom an equal privilege is withheld. And it gives to ambitious, corrupted [1] citizens, who devote themselves to the views of the favorite foreign power, facility in betraying or sacrificing the interests of their own country, even with popularity,[2] gilding with [3]

As avenues to foreign influence in innumerable ways, such attachments are peculiarly alarming to the enlightened independent patriot. How many opportunities do they afford to intrigue with domestic factions, to practise with success the arts of seduction, to mislead [4] the public opinion—to influence or awe the public councils? Such an attachment of a small or weak towards a great and powerful nation, destines the former to revolve round the latter as its satellite.

Against the mischiefs of foreign influence all the jealousy of a free people ought to be constantly [5] exerted [6]; but the jealousy of it to be useful must

[1] or deluded. [2] without odium.

[3] the appearance of a virtuous impulse, the base yieldings of ambition or corruption.

[4] "mislead" *for* "misdirect." [5] continually.

[6] all history and experience in different ages and nations have proved that foreign influence is one of the most baneful foes of republican government.

be impartial, else it becomes an instrument of the very influence to be avoided, instead of a defence [1] against it.

Excessive partiality for one foreign nation, and excessive dislike of another, leads to see danger only on one side, and serves to veil [2] the arts of influence on the other. Real patriots, who resist the intrigues of the favorite, become suspected and odious. Its tools and dupes usurp the applause and confidence of the people to betray their interests.

The great rule of conduct for us in regard to foreign nations ought to be to have as little *political* connection with them as possible. So far as we have already formed engagements, let them be fulfilled with circumspection, indeed, but with perfect good faith; here [3] let it stop.

Europe has a set of primary interests, which have none or a very remote relation to us. Hence she must be involved in frequent contests, the causes of which will be essentially foreign to us. Hence therefore, it must necessarily be unwise on our part to implicate ourselves by an artificial connection in the ordinary vicissitudes of European politics—in the combination and collisions of her friendships or enmities.

Our detached and distant situation invites us to a different course, and enables us to pursue it. If we remain a united people, under an efficient government, the period is not distant when we may defy material injury from external annoyance—when we may take such an attitude as will cause the neu-

[1] guard. [2] and second. [3] but there.

trality we shall at any time resolve to observe, to be violated with caution—when it will be the interest of belligerent nations, under the impossibility of making acquisitions upon us, to be very careful how either forced us to throw our weight into the opposite scale — when we may choose peace or war, as our interest, guided by justice, shall dictate.

Why should we forego the advantages of so felicitous a situation? Why quit our own ground to stand upon foreign ground? Why, by interweaving our destiny with any part of Europe, should we entangle our prosperity and peace in the nets of European ambition, rivalship, interest, or caprice?

Permanent alliance, intimate connection with any part of the foreign world is to be avoided; so far, I mean, as we are now at liberty to do it; for let me never be understood as patronizing infidelity to pre-existing engagements. These must be observed in their true and genuine sense.[1]

Harmony, liberal intercourse, and commerce with all nations are recommended by justice, humanity, and interest. But even our commercial policy should hold an equal hand, neither seeking nor granting exclusive favors or preferences—consulting the natural course of things—*diffusing* and *diversifying* by gentle means the streams of commerce, but forcing nothing—establishing with powers so dis-

[1] But 't is not necessary, nor will it be prudent, to extend them. 'T is our true policy, as a general principle, to avoid permanent or close alliances. Taking care always to keep ourselves by suitable establishments in a respectably defensive position, we may safely trust to occasional alliances for extraordinary emergencies.

posed [1] temporary [2] rules of intercourse, the best that present circumstances and mutual opinion of interest will permit, but temporary, and liable to be abandoned or varied, as time, experience, and future circumstances may dictate—remembering [3] that it is folly in one nation to expect disinterested favor in another, that to accept [4] is to part with a portion of its independence, and that it may find itself in the condition of having given equivalents for nominal favors, and of being reproached with ingratitude in the bargain. There can be no greater error in national policy than to desire, expect, or calculate upon real favors. 'T is an illusion that experience must cure, that a just pride ought to discard.

In offering to you, my countrymen, these counsels of an old and affectionate friend—counsels suggested by laborious reflection, and matured by a various experience, I dare not hope that they will make the strong and lasting impressions I wish—that they will control the current of the passions, or prevent our nation from running the course which has hitherto marked the destiny of all nations.

But [5] if they may even produce partial benefit, some occasional good * * * that they sometimes recur to moderate the violence of party spirit, to warn against the evils of foreign intrigue, to guard against the impositions of pretended patriotism, the having offered them must always afford me a precious consolation.

[1] In order to give to trade a stable course, to define the rights of our merchants, and enable the government to support them.

[2] and conventional. [3] always. [4] any thing under that character.

[5] I may flatter myself.

How far in the execution of my present office I have been guided by the principles which have been recommended,[1] the public records and the external evidences of my conduct must witness. My conscience assures me that I have at least believed myself to be guided by them.

In reference to the present war of Europe, my proclamation of the 22d April, 1793, is the key to my plan, sanctioned by your approving voice, and that of your Representatives in Congress—the spirit of that measure has continually governed me—uninfluenced and unawed by the attempts of any of the warring powers, their agents, or partisans, to deter or divert from it.

After deliberate consideration, and the best lights I could obtain (and from men who did not agree in their views of the origin, progress, and nature of that war), I was satisfied that our country, under all the circumstances of the case, had a right and was bound in propriety and interest to take a neutral position. And having taken it, I determined as[2] should depend on me to maintain it steadily and firmly.[3]

Though in reviewing the incidents of my administration I am unconscious of intentional error, I am yet too sensible of my own deficiencies, not to think it possible[4] that I have committed many errors; I deprecate the evils to which they may tend, and fervently implore the Almighty to avert or mitigate

[1] "inculcated" for "recommended."

[2] as far as.

[3] Here a large space is found in the draft evidently for the insertion of other matter.

[4] "probable" for "possible."

them. I shall carry with me, nevertheless, the hope that my motives will continue to be viewed by my country with indulgence, and that after forty-five years of my life, devoted with an upright zeal to the public service, the faults of inadequate abilities will be consigned to oblivion, as myself must soon be to the mansions of rest.

Neither ambition nor interest has been the impelling cause of my actions. I never designedly misused any power confided in me. The fortune with which I came into office, is not bettered otherwise than by that improvement in the value of property which the natural progress and peculiar prosperity of our country have produced. I retire[1] with a pure heart,[2] with undefiled hands, and with ardent vows for the happiness of a country, the native soil of myself and progenitors for four generations.

PART OF WASHINGTON'S SPEECH TO CONGRESS[3]

First Draft by Hamilton.

December 7, 1796.

That, among the objects of labor and industry, agriculture, considered with reference either to individual or national welfare, is first in importance, may safely be affirmed, without derogating from the just and real value of any other branch. It is, in-

[1] without cause for a blush.

[2] with no alien sentiment to the ardor of those vows for the happiness of his country, which is so natural to a citizen who sees in it.

[3] *Writings of Washington*, xiii., 65.

deed, the best basis of the prosperity of every other. In proportion as nations progress in population and other circumstances of maturity, this truth forces itself more and more upon the conviction of rulers, and makes the cultivation of the soil more and more an object of public patronage and care. Institutions for promoting it sooner or later grow up, supported by the public purse—and the full fruits of them, when judiciously conceived and directed, have fully justified the undertaking.

Among these, none have been found of greater utility than BOARDS, composed of proper characters, charged with collecting and communicating information, and enabled to stimulate enterprise and experiment by premiums and honorary rewards. These have been found very cheap instruments of immense benefits. They serve to excite a general spirit of discovery and improvement, to stimulate invention, to excite new and useful experiments—and accumulating in one centre the skill and improvement of every part of the nation, they spread it thence over the whole nation, at the same time promoting new discovery, and diffusing generally the knowledge of all the discoveries which are made.

In the United States, hitherto, no such institution has been essayed, though perhaps no country has stronger motives to it.

Agriculture among us is certainly in a very imperfect state. In much of those parts where there have been early settlements, the soil, impoverished by an unskilful tillage, yields but a scanty reward for the labor bestowed upon it, and leaves its possessors

under strong temptation to abandon it, and emigrate to distant regions, more fertile, because they are newer, and have not yet been exhausted by an unskilful use. This is every way an evil. The undue dislocation of our population from this cause promotes neither the strength, the opulence, nor the happiness of our country. It strongly admonishes our national councils to apply, as far as may be practical, by natural and salutary means, an adequate remedy. Nothing appears to be more unexceptionable, and likely to be more efficacious, than the institution of a Board of Agriculture, with the views I have mentioned, and with a moderate fund towards executing them. After mature reflection, I am persuaded it is difficult to render our country a more precious and general service, than by such an institution.

I will, however, observe, that if it be thought expedient, the objects of the Board may be still more comprehensive. It may embrace the encouragement of the mechanic and manufacturing arts by means analogous to those for the improvement of agriculture, and with an eye to the introduction, from abroad, of useful machinery, etc. Or there may be separate Boards, one charged with one object, the other with the other.

I have, heretofore, suggested the expediency of establishing a National University, and a Military Academy. The vast utility of both these measures presses so seriously and so constantly upon my mind, that I cannot forbear with earnestness to repeat the recommendation.

The assembly to which I address myself will not doubt that the extension of science and knowledge is an object primarily interesting to our national welfare. To effect this is most naturally the care of the particular local jurisdictions into which our country is subdivided, as far as regards those branches of instruction which ought to be universally diffused, and it gives pleasure to observe that new progress is continually making in the means employed for this end. But, can it be doubted that the general government would with peculiar propriety occupy itself in affording nutriment to those higher branches of science, which, though not within the reach of general acquisition, are in their consequences and relations productive of general advantage? Or can it be doubted that this great object would be materially advanced by a university erected on that broad basis to which the national resources are most adequate, and so liberally endowed, as to command the ablest professors in the several branches of liberal knowledge? It is true, and to the honor of our country, that it offers many colleges and academies, highly respectable and useful, but the funds upon which they are established are too narrow to permit any of them to be an adequate substitute for such an institution as is contemplated, and to which they would be excellent auxiliaries. Amongst the motives to such an institution, the assimilation of the principles, opinions, manners, and habits of our countrymen, by drawing from all quarters our youth to participate in a common education, well deserves the attention of government. To render the people

of this country as homogeneous as possible, must tend as much as any other circumstance to the permanency of their union and prosperity.

The eligibleness of a military academy depends on that evident maxim of policy which requires every nation to be prepared for war while cultivating peace, and warns it against suffering the military spirit and military knowledge wholly to decay. However particular instances, superficially viewed, may seem exceptions, it will not be doubted by any who have attentively considered the subject, that the military art is of a complicated and comprehensive nature, that it demands much previous study as well as practice, and that the possession of it in its most improved state is always of vast importance to the security of a nation. It ought, therefore, to be a principal care of every government, however pacific its general policy, to preserve and cultivate —indeed, in proportion as the policy of a country is pacific, and it is little liable to be called to practise the rules of the military art, does it become the duty of the government to take care, by proper institutions, that it be not lost. A military academy, instituted on proper principles, would serve to secure to our country, though within a narrow sphere, a solid fund of military information, which would always be ready for national emergencies, and would facilitate the diffusion of military knowledge as those emergencies might require.

A systematic plan for the creation of a moderate navy appears to me recommended by very weighty considerations. An active external commerce de-

mands a naval power to protect it, besides the dangers from wars, in which a maritime state is a party. It is a truth, which our own experience has confirmed, that the most equitable and sincere neutrality is not sufficient to exempt a state from the depredations of other nations at war with each other. It is essential to induce them to respect that neutrality, that there shall be an organized force ready to vindicate the national flag. This may even prevent the necessity of going into war by discouraging from those insults and infractions of right, which sometimes proceed to an extreme that leaves no alternative. The United States abound in materials. Their commerce, fast increasing, must proportionately augment the number of their seamen, and give us rapidly the means of a naval power, respectable, if not great. Our relative situation, likewise, for obvious reasons, would render a moderate force very influential, more so, perhaps, than a much greater in the hands of any other power. It is submitted as well deserving consideration, whether it will not be prudent immediately and gradually to provide and lay up magazines of ship-timber, and to build and equip annually one or more ships of force, as the development of resources shall render convenient and practicable, so that a future war in Europe, if we escape the present storm, may not find our commerce in the defenceless situation in which the present found it.

There is a subject which has dwelt long and much upon my mind, which I cannot omit this opportunity of suggesting. It is the compensation to our public

officers, especially those in the most important stations. Every man acquainted with the expense, even of the most frugal plan of living in our great cities, must be sensible of their inadequateness. The impolicy of such defective provisions seems not to have been sufficiently weighed.

No plan of governing is well founded, which does not regard man as a compound of selfish and virtuous passions. To expect him to be wholly guided by the latter, would be as great an error as to suppose him wholly destitute of them. Hence the necessity of adequate rewards for those services of which the public stand in need. Without them, the affairs of a nation are likely to get sooner or later into incompetent or unfaithful hands. If their own private wealth is to supply in the candidates for public office the deficiency of public liberality, then the sphere of those who can be candidates, especially in a country like ours, is much narrowed, and the chance of a choice of able as well as upright men much lessened. Besides that, it would be repugnant to the first principles of our government to exclude men, from the public trusts, because their talents and virtues, however conspicuous, are unaccompanied by wealth. If the rewards of the government are scanty, those who have talents without wealth, and are too virtuous to abuse their stations, cannot accept public offices without a sacrifice of interest; which, in ordinary times, may hardly be justified by their duty to themselves and their families. If they have talents without virtue, they may, indeed, accept offices to make a dishonest and improper use of them. The

tendency then is to transfer the management of public affairs to wealthy but incapable hands, or to hands which, if capable, are as destitute of integrity as of wealth. For a time, particular circumstances may prevent such a course of things, and hitherto the inference has not been verified in our experience. But it is not the less probable, that time will prove it to be well founded. In some governments men have many allurements to office, exclusive of pecuniary rewards—but from the nature of our government, pecuniary reward is the only aliment to the interested passions which public men who are not vicious can expect. If, then, it be essential to the prosperous course of every government, that it shall be able to command the services of its most able and most virtuous citizens of every class, it follows, that the compensations which our government allows ought to be revised and materially increased. The character and success of republican government appear absolutely to depend on this policy.

Congress have repeatedly directed their attention to the encouragement of manufactures, and have no doubt promoted them in several branches. The object is of too much importance not to assure a continuance of their efforts in every way which shall appear proper and conducive to the end. But in the present state of our country, we cannot expect that our progress, in some essential branches, will be as expeditious as the public welfare demands,—particularly in reference to security and defence in time of war. This reflection is the less pleasing when it is remembered how large a proportion of our supply

the course of our trade derives from a single nation. It appears very desirable, that at least, with a view to security and defence, some measures more efficacious than have heretofore been adopted should be taken. As a general rule, manufactories carried on upon public account are to be avoided. But every general rule may admit of exceptions. Where the state of things in our country leaves little expectation that certain branches of manufacture will, for a great length of time, be sufficiently cultivated—when these are of a nature to be essential to the furnishing and equipping of the troops and ships of war of which we stand in need—are not establishments on the public account, to the *extent of the public demand* for supply, recommended by very strong considerations of national policy? Ought our country to be dependent in such cases upon foreign supply, precarious because liable to be interrupted? If the necessary supplies [1] should be procured in this mode, at great expense—in time of peace—will not the security and independence arising from it very amply compensate? Institutions of this kind commensurate only with our peace establishments, will in time of war be easily extended in proportion to the public exigencies, and they may even perhaps be rendered contributary to the supply of our citizens at large, so as greatly to mitigate the privation arising from the interruption of trade.

The idea at least is worthy of the most serious

[1] Additional paragraph of Washington's first draft of speech of Dec. 7, 1796, now first printed from Hamilton's MSS.; see pp. 69, 70, and 74, vol. xii., *Writings of Washington.*

consideration. If adopted, the plan ought, of course, to exclude all those branches which may be considered as already established in our country, and to which the efforts of individuals appear already, or likely to be, speedily adequate.

A reinforcement of the existing provisions for discharging our public debt was mentioned in my address at the opening of the last session. Congress took some preliminary steps, the maturing of which will no doubt engage their zealous attention during the present. I will only add that it will afford me a heartfelt satisfaction to concur in such auxiliary measures as will ascertain to our country the prospect of a speedy extinguishment of the debt. Posterity may have cause to regret if, from any motive, intervals of tranquillity are left unemployed for accelerating this valuable end.

ADDRESS TO THE ELECTORS OF THE STATE OF NEW YORK

1801.

FELLOW-CITIZENS:

We lately addressed you on the subject of the ensuing election for Governor and Lieutenant-Governor—recommending to your support Stephen Van Rensselaer and James Watson. Since that, we have seen the address of our opponents, urging your preference of George Clinton and Jeremiah Van Rensselaer.

The whole tenor of our address carries with it the evidence of a disposition to be temperate and liberal;

to avoid giving occasion to mutual recrimination. It would have been agreeable to us to have seen a like disposition in our adversaries; but we think it cannot be denied that their address manifests a different one. It arraigns the principles of the Federalists with extreme acrimony, and by the allusion to Great Britain, in the preposterous figure of the mantle, attributes to them a principle of action, which every signer of the address knows to have no existence, and which for its falsehood and malice merits indignation and disdain.

So violent an attack upon our principles justifies and calls for an exhibition of those of our opponents. To your good sense, to your love of country, to your regard for the welfare of yourself and families, the comment is submitted.

The pernicious spirit which has actuated many of the leaders of the party denominated anti-federal, from the moment when our national Constitution was first proposed down to the present period, has not ceased to display itself in a variety of disgusting forms. In proportion to the prospect of success it has increased in temerity. Emboldened by a momentary triumph in the choice of our national Chief Magistrate, it seems now to have laid aside all reserve, and begins to avow projects of disorganization, with the sanction of the most respectable names of the party, which before were merely the anonymous ravings of incendiary newspapers.

This precipitation in throwing aside the mask will, we trust, be productive of happy effects. It will serve to show that the mischievous designs ascribed

to the party have not been the effusions of malevolence, the inventions of political rivalship, or the visionary forebodings of an over-anxious zeal; but that they have been just and correct inferences from an accurate estimate of characters and principles. It will serve to show that moderate men, who have seen in our political struggles nothing more than a competition for power and place, have been deceived; that in reality the foundations of society, the essential interests of our nation, the dearest concerns of individuals, are staked upon the eventful contest. And by promoting this important discovery, it may be expected to rally the virtuous and the prudent of every description round a common standard; to endeavor, by joint efforts, to oppose mounds to that destructive torrent, which in its distant murmuring seemed harmless, but in the portentous roaring of its nearer approach, menaces our country with all the horrors of revolutionary frenzy.

To what end, fellow-citizens, has your attention been carried across the Atlantic, to the Revolution of France, and to that fatal war of which it has been the source? To what end are you told, that this is the most interesting conflict man ever witnessed—that it is a war of principles—a war between equal and unequal rights—between republicanism and monarchy—between liberty and tyranny.

What is there in that terrific picture which you are to admire or imitate? Is it the subversion of the throne of the *Bourbons*, to make way for the throne of the *Bonapartes?* Is it the undistinguishing massacre in prisons and dungeons, of men, women, and

children? Is it the sanguinary justice of revolutionary tribunals, or the awful terrors of a guillotine? Is it the rapid succession of revolution upon revolution, erecting the transient power of one set of men upon the tombs of another? Is it the assassinations which have been perpetrated, or the new ones which are projected? Is it the open profession of impiety in the public assemblies, or the ridiculous worship of a Goddess of Reason, or the still continued substitution of decades to the Christian Sabbath? Is it the destruction of commerce, the ruin of manufactures, the oppression of agriculture? Or, is it the pomp of war, the dazzling glare of splendid victories, the bloodstained fields of Europe, the smoking cinders of desolated cities, the afflicting spectacle of millions precipitated from plenty and comfort to beggary and misery? If it be none of these things, what is it?

Perhaps it is the existing government of France, of which your admiration is solicited?

Here, fellow-citizens, let us on our part invite you to a solemn pause. Mark, we beesech you, carefully mark, in this result, the fruit of those extravagant and noxious principles which it is desired to transplant into our happy soil.

Behold a consul for ten years elected, ***not by the people***, but by a conservatory Senate, ***self-created*** and ***self-continued for life;*** a magistrate who, to the plenitude of executive authority, adds the peculiar and vast prerogative of an exclusive right to originate every law of the republic.

Behold a Legislature elected, ***not by the people***, but

by the same conservatory Senate, one branch for fourteen, the other for ten years; one branch with a right to debate the law proposed by the consul, but not to propose; another with right neither to debate nor propose, but merely to assent or dissent, leaving to the people nothing more than the phantom of representation, or the useless privilege of designating one *tenth* of their whole mass as *candidates* indiscriminately for the officers of the State, according to the *option* of the conservatory Senate.

Behold this magic lantern of republicanism; the odious form of real despotism; garnished and defended by the bayonets of more than five hundred thousand men in disciplined array.

Do you desire an illustration of the practical effect of this despotic system, read it in the last advices from France. Read it in the exercise of a power by the chief consul, recognized to belong to him by the conservatory Senate, to banish indefinitely the citizens of France without trial, without the formality of a legislative act. Then say, where can you find a more hideous despotism? Or, what ought ye to think of those men who dare to recommend to you as the Bible of your political creed, the principles of a revolution, which in its commencement, in its progress, in its termination (if termination it can have, before it has overthrown the civilized world), is only fitted to serve as a beacon to warn you to shun the gulfs, the quicksands, and the rocks of those enormous principles?

Surely ye will applaud neither the wisdom nor the patriotism of men, who can wish you to exchange

the fair fabric of republicanism which you now enjoy, modelled and decorated by the hand of federalism, for that tremendous form of despotism which has sprung up amidst the volcanic eruptions of *principles at war* with all past and present experience, at war with the nature of man.

Or, was the allusion to France and her Revolution, to the war of principles of which you have heard, intended to familiarize your ears to a war of arms, as one of the blessings of the new order of things? Facts, which cannot be mistaken, demonstrate that in the early period of the French Revolution, it was the plan of our opponents to engage us in the war as associates of France. But at this late hour, when even the pretence of supporting the cause of liberty has vanished, when acquisition and aggrandizement have manifestly become the only, the exclusive objects of this war, it was surely to have been expected that we should have been left to retain the advantage of a pacific policy.

If there are men who hope to gratify their ambition, their avarice, or their vengeance, by adding this country to the league of northern powers, in the fantastic purpose of an extension of neutral rights, the great body of the people will hardly, we imagine, see in this project benefits sufficiently solid and durable to counterbalance the certain sacrifices of present advantages, and the certain sufferings of positive evils inseparable from a state of war.

Let us now attend to some other parts of this extraordinary address.

We are told that there are many in the bosom of

our country who have long aimed at unequal privileges, and who have too well succeeded, by arrogating to themselves the right to be considered as the only friends of the Constitution, the guardians of order and religion, by the lavish abuse of their opponents, and by representing opposition to particular plans of administration as hostility to the government itself.

What is meant by this aiming at unequal privileges?

If we are to judge of the end by the means stated to have been used, the charge amounts to this, that the Federalists have sought to retain in their own hands, by the suffrages of the people, the exercise of the powers of the government.

Admitting the charge to be true, have not the Anti-Federalists pursued exactly the same course? Have they not labored incessantly to monopolize the power of our national and State governments? Whenever they have had it, have they not strained every nerve to keep it? Why is it a greater crime in the Federalists than in their rivals to aim at an ascendant in the councils of our country?

It is true, as alleged, that the Federalists insisted upon their superior claim to be considered as the friends of our Constitution, and have imputed to their adversaries improper and dangerous designs; but it is equally true, that these have asserted a similar claim, have advanced the pretension of being the only republicans and patriots, have charged their opponents with being in league with Great Britain to establish monarchy, have imputed to men of

unblemished characters for probity in high public offices, corruption and peculation, and have persisted in the foul charge after its falsity had been ascertained by solemn public inquiry; and in their wanton and distempered rage for calumny have not scrupled to brand even a Washington as a *tyrant*, a *conspirator*, a *peculator*.

It is also true, that the Federalists have represented the leaders of the other party as hostile to our national Constitution; but it is not true that it was because they have been unfriendly to *particular plans* of its administration.

It is because, as a party, and with few exceptions, they were violent opposers of the adoption of the Constitution itself; predicted from it every possible evil, and painted it in the blackest colors, as a monster of political deformity.

It is because the amendments subsequently made, meeting scarcely any of the important objections which were urged, leaving the structure of the government, and the mass and distribution of its powers where they were, are too insignificant to be with any sensible man a reason for being reconciled to the system if he thought it originally bad.

It is because they have opposed not *particular plans* of the administration, but the general course of it, and almost all the measures of material consequence, and this, too, not under one man or set of men, but under all the successions of men.

It is because, as there have been no alterations of the Constitution sufficient to change the opinion of its merits, and as the practice under it has met with

the severest reprobation of the party, there is no circumstance from which to infer that they can really have been reconciled to it.

It is because the newspapers under their direction have from time to time continued to decry the Constitution itself.

It is because they have openly avowed their attachment to the excessive principles of the French Revolution, and to leading features in the crude forms of government which have appeared only to disappear; utterly inconsistent with the sober maxims upon which our federal edifice was reared, and with essential parts in its structure. As specimens of this, it is sufficient to observe that they have approved the unity of the legislative power in one branch, and have been loud in their praises of an executive directory—that five-headed monster of faction and anarchy.

It is because they have repeatedly shown, and in their present address again show, that they contemplate innovations in our public affairs, which, without doubt, would disgrace and prostrate the government.

On these various and strong grounds have the Federalists imputed to their opponents disaffection to the national Constitution. As yet they have no reason to retract the charge. To future proofs of repentance and reconciliation must an exculpation be referred. The Anti-Federalists have acquired the administration of the national government. Let them show by a wise and virtuous management that they are its friends, and they shall then have all the

credit of so happy a reformation; but till then their assertions cannot be received as proofs.

And if the views which the signers of the address now boldly avow should unfortunately be those which should regulate the future administration of the government, the tokens of their amity would be as pernicious as could possibly be the tokens of their most deadly hatred.

They enumerate, as the crimes of the Federalists, the funding system, the national debt, the taxes which constitute the public revenue, the British treaty, the federal city, the mint, a mausoleum, the sedition law, and a standing army; and they tell us in plain terms that these are "abuses no longer to be suffered."

Let it be observed in the first place that these crying sins of our government are not to be placed exclusively to the account of the Federalists; that for some of them the other party are chiefly responsible, and that in others they have participated.

As to the *federal city*, it is not to be denied that this was a favorite of the illustrious Washington. But it is no less certain that it was warmly patronized by Mr. Jefferson, Mr. Madison, and the great majority of the members who at the time composed the opposition in Congress, and who are now influential in the anti-federal party. It is also certain that the measure has never been a favorite of a majority of the federal party.

As to the *mint*, it was not at all a measure of party. With slight diversities of opinion about some of the details, it was approved by both parties.

As to the *mausoleum*, it has not taken place at all. The bill for erecting it was lost in the Senate, where the Federalists have a decided majority; and, instead of it, an appropriation of fifty thousand dollars was made for erecting an equestrian statue, *agreeably to a resolution of Congress passed under the old Confederation*. Is there an American who would refuse this memorial of gratitude to the man who is the boast of his country, the honor of his age?

As to the *funding system*, it was thus far a measure of both parties, that both agreed there should be a *funding system*. In the formation of it the chief points of difference were, 1st, a discrimination between original holders and transferees of the public debt; 2d, a provision for the general debt of the Union, leaving to each State to make separate provision for its particular debt.

Happily for our country, by the rejection of the first, which would have been an express violation of contracts, the faith of the government was preserved, its credit maintained and established.

Happily for our country, by not pursuing the last, unity, simplicity, and energy were secured to our fiscal system. The entanglements of fourteen conflicting systems of finance were avoided. The same mass of debt was included in one general provision instead of being referred to fourteen separate provisions, more comprehensive justice was done, the States which had made extraordinary exertions for the support of the common cause were relieved from the unequal pressure of burthens which must have crushed them, and the people were saved from the

immense difference of expense between a collection of the necessary revenues by one set of officers or by fourteen different sets.

The truth, then, fellow-citizens, is this:—Both parties agreed that there should be a *funding* system; and the particular plan which prevailed was most agreeable to the contract of the government, most conducive to general and equal justice among the States and individuals, to order and efficiency in the finances, to economy in the collection.

Ought not these ideas to have governed? What is meant by holding up the funding system as an abuse no longer to be tolerated?

What is this funding system? It is nothing more nor less than the *pledging of adequate funds or revenues for paying the interest and for the gradual redemption of the principal* of that very debt which was the sacred price of independence. The country being unable to pay off the principal, what better could have been done?

It is recollected, that long before our revolution most of the States had their funding systems. They emitted their paper money, which is only another phrase for certificates of debt; and they pledged funds for its redemption, which is but another phrase for *funding* it. What, then, is there so terrible in the idea of a funding system? Those who may have been accustomed under some of the State governments to gamble in the floating paper, and when they had monopolized a good quantity of it among themselves at low prices, to make partial legislative provisions for the payment of the particular kinds,

would very naturally be displeased with a fixed and permanent system, which would give to the evidences of debt a stable value, and lop off the opportunities for gambling speculations; but men who are sensible of the pernicious tendency of such a state of things, will rejoice in a plan which was designed to produce, and *has produced*, a contrary result.

What have been the effects of this system? An extension of commerce and manufactures, the rapid growth of our cities and towns, the consequent prosperity of agriculture, and the advancement of the farming interest. All this was effected by giving life and activity to a capital in the public obligations, which was before dead, and by converting it into a powerful instrument of mercantile and other industrious enterprise.

We make these assertions boldly, because the fact is exemplified by experience, and is obvious to all discerning men. Our opponents in their hearts know it to be so.

As to the public debt; the great mass of it was not created by the Federalists peculiarly. It was contracted by all who were engaged in our councils during our revolutionary war. The Federalists have only had a principal agency in providing for it. No man can impute that to them as a crime who is not ready to avow the fraudulent and base doctrine, that it is wiser and better to cheat than to pay the creditors of a nation.

It is a fact certain and notorious, that under the administration of the first Secretary of the Treasury

ample provision was made, not only for paying the interest of this debt, but for extinguishing the principal in a moderate term of years.

But it is alleged that this debt has been increased, and is increasing.

On this point we know that malcontent individuals make the assertion and exhibit statements intended to prove it. But this we also know, that a committee of the House of Representatives, particularly charged with the inquiry, have stated and reported the contrary; and we think that more credit is due to their representation than to that of individuals, especially as nothing is easier than in a matter of this sort to make plausible statements, which, though utterly false, cannot be detected except by those who possess all the materials of a complex calculation, who are qualified, and who will take the pains to make it.

We know likewise that extraordinary events have compelled our government to extraordinary expenditures—an Indian war, for some time disastrous, but terminated on principles likely to give durable tranquillity to our frontier; two insurrections fomented by the opposition to the government; the hostilities of a foreign power, encouraged by the undissembled sympathies of the same opposition, which obliged the government to arm for defence and security. These things have retarded the success of the efficacious measures which have been adopted for the discharge of our debt; measures which, with a peaceable and orderly course of things, accelerated by the rapid growth of our country, are sufficient in a few years,

without any new expedient, to exonerate it from the whole of its present debt.

These, fellow-citizens, are serious truths, well known to most of our opponents, but which they shamefully endeavor to disfigure and disguise.

As to *taxes*, they are evidently inseparable from government. It is impossible without them to pay the debts of the nation, to protect it from foreign danger, or to secure individuals from lawless violence and rapine. It is always easy to assert that they are heavier than they ought to be, always difficult to refute the assertion, which cannot ever be attempted without a critical review of the whole course of public measures. This gives an immense advantage to those who make a trade of complaint and censure.

But, fellow-citizens, it is in our power to state to you in relation to this subject, and upon good information, one material fact.

There is, perhaps, no item in the catalogue of our taxes which has been more unpopular than that which is called the *direct tax*.

This tax may emphatically be placed to the account of the opposite party; it was always insisted upon by them as preferable to taxes of the indirect kind. And it is a truth capable of full proof, that *Mr. Madison*, second in the confidence of the antifederal party, the confidential friend of *Mr. Jefferson*, and now Secretary of State by his nomination, was the proposer of this tax. This was done in a committee of the last House of Representatives, of which he was a member, was approved by that committee, and referred to the late Secretary of the

Treasury, Mr. Wolcott, with *instructions* to prepare a plan as to the *mode*. Let it be added that it was a principle of the federal party never to resort to this species of tax but in time of war or hostility with a foreign power; that it was in such a time when they did resort to it, and that the occasion ceasing by the prospect of an accommodation, it has been resolved by them not to renew the tax.

As to the *British treaty*, it is sufficient to remind you of the extravagant predictions of evil persons of its ratification, and to ask you in what have they been realized? You have seen our peace preserved, you have seen our western posts surrendered, our commerce proceed with success in its wonted channels, and our agriculture flourish to the extent of every reasonable wish; and you have been witnesses to none of the mischiefs which were foretold. You will, then, conclude with us that the clamors against this treaty are the mere ebullitions of ignorance, of prejudice, and of faction.

As to the *sedition law*, we refer you to the debates in Congress for the motives and nature of it. More would prolong too much this reply, already longer than we could wish.

We will barely say that the most essential object of this act is to declare the courts of the United States competent to the cognizance of those slanders against the principal officers and departments of the Federal Government, which at common law are punishable as libels, with the liberal and important mitigation of allowing the truth of an accusation to be given in exoneration of the accuser. What do you

see in this to merit the execrations which have been bestowed on the measure?

As to a *standing army*, there is none, except four small regiments of infantry, insufficient for the service of guards in the numerous posts of our immense frontiers stretching from Niagara to the borders of Florida, and two regiments of artillery, which occupy in the same capacity the numerous fortifications along our widely extended sea-coast. What is there in this to affright or disgust? If these corps are to be abolished, substitutes must be found in the militia. If the experiment shall be made, it is to foretell that it will prove not a measure of economy, but a heavy bill of additional cost, and like all other visionary schemes will be productive only of repentance and a return to a plan injudiciously renounced.

This exposition of the measures which have been represented to you as abuses *no longer to be suffered* (mark the strength of the phrase) will, we trust, serve to satisfy you of the violence and absurdity of those crude notions which govern our opposers, if we believe them to be sincere. Happily for our country, however, there has just beamed a ray of hope that these violent and absurd notions will not form the rule of conduct of the person whom the party have recently elevated to the head of our national affairs.

In the speech of the new President upon assuming the exercise of his office, we find among the articles of his creed,—"the honest *payment of our* DEBT, *and sacred preservation of the* PUBLIC FAITH."

The funding system, the national debt, the British treaty, are not therefore in his conception abuses, which, if no longer to be tolerated, would be of course to be abolished.

But we think ourselves warranted to derive from the same source, a condemnation still more extensive of the opinions of our adversaries. The speech characterizes our present government "as a republican in the *full tide* of successful *experiment.*" Success in the *experiment* of a government, is success in the *practice* of it, and this is but another phrase for an administration, in the main, wise and good. That administration has been hitherto in the hands of the Federalists.

Here then, fellow-citizens, is an open and solemn protest against the principles and opinions of our opponents, from a quarter which as yet they dare not arraign.

In referring to this speech, we think it proper to make a public declaration of our approbation of its contents. We view it as virtually a candid retraction of past misapprehensions, and a pledge to the community, that the new President will not lend himself to dangerous innovations, but in essential points will tread in the steps of his predecessors.

In doing this, he prudently anticipates the loss of a great portion of that favor which has elevated him to his present station. Doubtless, it is a just foresight. Adhering to the professions he has made, it will not be long before the body of the Anti-Federalists will raise their croaking and ill-omened voices against him. But in the talents, the patriotism, and

the firmness of the Federalists, he will find more than an equivalent for all that he shall lose.

All those of whatever party who may desire to support the moderate views exhibited in the presidential speech, will unite against the violent projects of the men who have addressed you in favor of Mr. Clinton, and against a candidate who, in all past experience, has evinced that he is likely to be a fit instrument of these projects.

Fellow-citizens, we beseech you to consult your *experience* and not listen to tales of evil, which exist only in the language, not even in the imaginations, of those who deal them out. This experience will tell you, that our opposers have been uniformly mistaken in their views of our Constitution, of its administration, in all the judgments which they have pronounced of our public affairs; and, consequently, that they are unfaithful or incapable advisers. It will teach you that you have eminently prospered under the system of public measures pursued and supported by the Federalists. In vain are you told that you owe your prosperity to your own industry, and to the blessings of Providence. To the latter, doubtless, you are primarily indebted. You owe to it, among other benefits, the Constitution you enjoy, and the wise administration of it by virtuous men as its instruments. You are likewise indebted to your own industry. But has not your industry found aliment and incitement in the salutary operation of your government—in the preservation of order at home—in the cultivation of peace abroad—in the invigoration of confidence in pecuniary dealings—

in the increased energies of credit and commerce—in the extension of enterprise, ever incident to a good government well administered? Remember what your situation was immediately before the establishment of the present Constitution? Were you then deficient in industry more than now? If not, why were you not equally prosperous? Plainly, because your industry had not at that time the vivifying influences of an efficient and well-conducted government.

There is one more particular in the address which we cannot pass over in silence, though, to avoid being tedious, we must do little more than mention it. It is a comparison between the administration of the former and present governors of this State, on the point of economy, accompanied with the observation, that the former had shown an anxious solicitude to exempt you from taxation.

The answer to this is, that under the administration of Mr. Clinton the State possessed large resources, which were the substitute for taxation—the duties of impost, the proceeds of confiscated property, and immense tracts of new land, which, if they had been providently disposed of, would have long deferred the necessity of taxation. That this was not done, Mr. Clinton, as one of the commissioners of the land office, is in a principal degree responsible.

Under the administration of Mr. Jay, the natural increase of the State has unavoidably augmented the expense of the government, and the appropriations of large sums, in most of which all parties have concurred, to a variety of objects of public utility and necessity, have so far diminished the funds of the

State as in the opinion of all parties to have required a resort to taxes.

The principal of these objects have been: 1. The erection of fortifications, and the purchase of cannon, arms, and other warlike implements for the purpose of defence. 2. The building and maintenance of the State prisons, in the laudable experiment of an amelioration of our penal code. 3. The purchase from Indians of lands which, though resold, have not yet been productive of revenue. 4. The payment of dower to the widows of persons whose estates have been confiscated. 5. Large appropriations for the benefit of common schools, roads, and bridges. 6. The erection of an arsenal and public offices in the city of Albany.

Hence it is evident that the difference which has been remarked to you in respect to taxation, has proceeded from a difference of circumstances, not from the superior providence or economy of the former, or from the improvidence or profusion of the existing administration. Our opponents may be challenged to bring home to Mr. Jay the proofs of prodigality, and they may be told that the purity and integrity of his conduct in relation to the public property have never for a moment been drawn into question.

We forbear to canvass minutely the personalities in which our adversaries have indulged. 'T is enough for us, that they acknowledge our candidate to possess the good qualities which we have ascribed to him. If he has inherited a large estate, 't is certainly no crime.

'T is to his honor that his benevolence is as large

as his estate. Let his numerous tenants be his witnesses:—attached as they are to him, not by the ties of dependence (for the greater part of them hold their lands in fee simple and upon easy rents), but by the ties of affection, by those gentle and precious cords which link gratitude to kindness. Let the many indigent and distressed who have been gladdened by the benign influence of his bounty, be his witnesses. And let every reflecting man well consider, whether the people are likely to suffer because the ample fortune of a virtuous and generous Chief Magistrate places him beyond the temptation of a job, for the accumulation of wealth.

We shall not inquire how ample may be the domains, how productive the revenues, how numerous the dependents of Mr. Clinton, nor how his ample domains may have been acquired. 'T is enough for us to say, that if Mr. Van Rensselaer is *rich*, Mr. Clinton is not poor, and that it is at least as innocent in the former to have been born to opulence, as in the latter to have attained to it by means of the advantages of the first office of the State, long, very long enjoyed, for three years at least too long, because, by an unlawful tenure, contrary to a known majority of suffrages.

We shall not examine how likely it is that a man considerably past the meridian of life, and debilitated by infirmities of body, will be a more useful and efficient governor, and more independent of the aid of friends and relations, than a man of acknowledged good sense, of mature years, in the full vigor of life, and in the full energy of his faculties.

We shall not discuss how far it is probable that the radical antipathy of Mr. Clinton to the vital parts of our National Constitution has given way to the little formal amendments which have since been adopted. We are glad to be assured that it has. It gives us pleasure to see proselytes to the truth; nor shall we be over-curious to inquire how men get right if we can but discover that they are right. If, happily, the possession of the power of our once-detested government shall be a talisman to work the conversion of all its enemies, we shall be ready to rejoice that good has come out of evil.

But we dare not too far indulge this pleasing hope. We know that the adverse party has its Dantons, and its Robespierres, as well as its Brissots and its Rolands; and we look forward to the time when the sects of the former will endeavor to confound the latter and their adherents, together with the Federalists, in promiscuous ruin.

In regard to these sects, which compose the pith and essence of the anti-federal party, we believe it to be true that the contest between us is indeed a war of principles—a war between tyranny and liberty, but not between monarchy and republicanism. It is a contest between the tyranny of Jacobinism, which confounds and levels every thing, and the mild reign of rational liberty, which rests on the basis of an efficient and well-balanced government, and through the medium of stable laws shelters and protects the life, the reputation, the civil and religious rights of every member of the community.

'T is against these sects that all good men should

form an indissoluble league. To resist and frustrate their machinations is alike essential to every prudent and faithful administration of our government, whoever may be the depositories of the power.

EXAMINATION OF JEFFERSON'S MESSAGE TO CONGRESS OF DECEMBER 7, 1801 [1]

NO. I

December 17, 1801.

Instead of delivering a *speech* to the Houses of Congress, at the opening of the present session, the President has thought fit to transmit a *Message*. Whether this has proceeded from pride or from humility, from a temperate love of reform or from a wild spirit of innovation, is submitted to the conjectures of the curious. A single observation shall be indulged—since all agree that he is unlike his predecessors in essential points, it is a mark of consistency to differ from them in matters of form.

Whoever considers the temper of the day must be satisfied that this message is likely to add much to the popularity of our Chief Magistrate. It conforms, as far as would be tolerated at this early stage of our progress in political perfection, to the bewitching tenets of that illuminated doctrine, which promises man, erelong, an emancipation from the

[1] This paper and that which precedes it really constitute a defence of the Federalist party and an elaborate and bitter criticism of their opponents. As specimens of controversial political writing, they take very high rank, and are admirable examples of Hamilton's power and force in this field of literature.

burdens and restraints of government; giving a foretaste of that pure felicity which the apostles of this doctrine have predicted. After having, with infinite pains and assiduity, formed the public taste for this species of fare, it is certainly right, in those whom the people have chosen for their caterers, to be attentive to the gratification of that taste. And should the viands, which they may offer, prove baneful poisons instead of wholesome aliments, the justification is both plain and easy—*Good patriots must at all events please the people.* But those whose patriotism is of the old school, who differ so widely from the disciples of the new creed, that they would rather risk incurring the displeasure of the people by speaking unpalatable truths, than betray their interest by fostering their prejudices, will never be deterred by an impure tide of popular opinion from honestly pointing out the mistakes or the faults of weak or wicked men, who may have been selected as guardians of the public weal.

The message of the President, by whatever motives it may have been dictated, is a performance which ought to alarm all who are anxious for the safety of our government, for the respectability and welfare of our nation. It makes, or aims at making, a most prodigal sacrifice of constitutional energy, of sound principle, and of public interest, to the popularity of one man.

The first thing in it, which excites our surprise, is the very extraordinary position, that though *Tripoli had declared war in form* against the United States, and had enforced it by actual hostility, yet that

there was not power, for want of *the sanction of Congress*, to capture and detain her cruisers with their crews.

When the newspapers informed us that one of these cruisers, after being subdued in a bloody conflict, had been liberated and permitted quietly to return home, the imagination was perplexed to divine the reason. The conjecture naturally was, that pursuing a policy too refined perhaps for barbarians, it was intended, by that measure, to give the enemy a strong impression of our magnanimity and humanity. No one dreamt of a scruple as to the *right* to seize and detain the armed vessel of an open and avowed foe, vanquished in battle. The enigma is now solved, and we are presented with one of the most singular paradoxes ever advanced by a man claiming the character of a statesman. When analyzed, it amounts to nothing less than this, that *between* two nations there may exist a state of complete war on the one side—of peace on the other.

War, of itself, gives to the parties a mutual right to kill in battle, and to capture the persons and property of each other. This is a rule of natural law; a necessary and inevitable consequence of the state of war. This state between two nations is completely produced by the act of one—it requires no concurrent act of the other. It is impossible to conceive the idea, that one nation can be in full war with another, and this other not in the same state with respect to its adversary. The moment that two nations are, in an absolute sense, at war, the public force of each may exercise every act of hostility, which the general

laws of war authorize, against the persons and property of the other. As it respects this conclusion, the distinction between offensive and defensive war makes no difference. That distinction is only material to discriminate the aggressing nation from that which defends itself against attack. The war is offensive on the part of the state which makes it; on the opposite side it is defensive; but the rights of both, as to the measure of hostility, are equal.

It will be readily allowed, that the constitution of a particular country may limit the organ charged with the direction of the public force, in the use or application of that force, even in time of actual war; but nothing short of the strongest negative words, of the most express prohibitions, can be admitted to restrain that organ from so employing it, as to derive the fruits of actual victory, by making prisoners of the persons and detaining the property of a vanquished enemy. Our Constitution, happily, is not chargeable with so great an absurdity. The framers of it would have blushed at a provision, so repugnant to good sense, so inconsistent with national safety and convenience. That instrument has only provided affirmatively, that, "The Congress shall have power to declare war"; the plain meaning of which is, that it is the peculiar and exclusive province of Congress, *when the nation is at peace*, to change that state into a state of war; whether from calculations of policy, or from provocations or injuries received; in other words, it belongs to Congress only, *to go to war*. But when a foreign nation declares or openly and avowedly makes war upon the United States, they are

then by the very fact *already at war*, and any declaration on the part of Congress is nugatory; it is at least unnecessary. This inference is clear in principle, and has the sanction of established practice. It is clear in principle, because it is self-evident, that a declaration by one nation against another, produces at once a complete state of war between both, and that no declaration on the other side can at all vary their relative situation; and in practice, it is well known that nothing is more common than when war is declared by one party, to prosecute mutual hostilities without a declaration by the other.

The doctrine of the message includes the strange absurdity, that without a declaration of war by Congress, our public force may destroy the life but may not restrain the liberty or seize the property of an enemy. This was exemplified in the very instance of the Tripolitan corsair. A number of her crew were slaughtered in the combat, and after she was subdued, she was set free with the remainder. But it may perhaps be said that she was the assailant, and that resistance was an act of mere defence and self-preservation. Let us then pursue the matter a step further. Our ships had blockaded the Tripolitan admiral in the Bay of Gibraltar; suppose he had attempted to make his way out, without first firing upon them; if permitted to do it, the blockade was a farce; if hindered by force, this would have amounted to more than a mere act of defence; and if a combat had ensued, we should then have seen a perfect illustration of the unintelligible right, to take the life

but not to abridge the liberty or capture the property of an enemy. Let us suppose an invasion of our territory, previous to a declaration of war by Congress. The principle avowed in the message would authorize our troops to kill those of the invader, if they should come within the reach of their bayonets, perhaps to drive them into the sea, and drown them; but not to disable them from doing harm, by the milder process of making them prisoners and sending them into confinement. Perhaps it may be replied that the same end would be answered by disarming, and leaving them to starve. The merit of such an argument would be complete by adding that, should they not be famished before the arrival of their ships with a fresh supply of arms, we might then, if able, disarm them a second time, and send them on board their fleet, to return safely home.

The inconvenience of the doctrine in practice is not less palpable than its folly in theory. In every case it presents a most unequal warfare. In the instance which has occurred, the vanquished barbarian got off with the loss of his guns. Had he been victorious, those Americans, whose lives might have been spared, would have been doomed to wear out a miserable existence in slavery and chains. Substantial benefits would have rewarded his success; while on our side, life, liberty, and property were put in jeopardy for an empty triumph. This, however, presents a partial inconvenience—cases may arise in which evils of a more serious and comprehensive nature would be the fruits of this visionary

and fantastical principle. Suppose that, in the recess of Congress, a foreign maritime power should unexpectedly declare war against the United States, and send a fleet and army to seize Rhode Island, in order from thence to annoy our trade and our seaport towns. Till the Congress should assemble and declare war, which would require time, our ships might, according to the hypothesis of the message, be sent by the President to fight those of the enemy as often as they should be attacked, but not to capture and detain them; if beaten, both vessels and crews would be lost to the United States; if successful, they could only disarm those they had overcome, and must suffer them to return to the place of common rendezvous, there to equip anew, for the purpose of resuming their depredations on our towns and our trade.

Who could restrain the laugh of derision at positions so preposterous, were it not for the reflection that in the first magistrate of our country they cast a blemish on our national character? What will the world think of the fold when such is the shepherd?

LUCIUS CRASSUS.

NO. II

December 21, 1801.

The next most prominent feature in the message is the proposal to abandon at once all the internal revenue of the country. The motives avowed for this astonishing scheme are, that "there is *reasonable ground of confidence* that this part of the revenue may now be safely dispensed with; that the remain-

ing sources will be sufficient to provide for the support of government, *to pay the interest* of the public debt, and to *discharge the principal* in shorter periods than the *laws* or the *general expectation* had contemplated; and that though wars and untoward events might change this prospect of things, and call for expenses which the *impost* could not meet, yet that sound principles would not justify our taxing the industry of our fellow-citizens to *accumulate treasure* for wars to happen we knew not when, and which might not perhaps happen but from the *temptations offered* by that treasure."

If we allow these to be more than ostensible motives, we shall be driven to ascribe this conduct to a deficiency of intellect, and to an ignorance of our financial arrangements, greater than could have been suspected; if but ostensible, it is then impossible to trace the suggestion to any other source than the culpable desire of gaining or securing popularity at an immediate expense of public utility, equivalent, on a pecuniary scale, to a million [1] of dollars annually, and at the greater expense of a very serious invasion of our system of public credit.

That these at least are the certain consequences of the measure, shall be demonstrated by arguments which are believed to be unanswerable.

To do this the more effectually, it is necessary to premise that some of the revenues now proposed to

[1] This is taken as a round number. The present net product, including the duties on stamps, seems to be between eight and nine hundred thousand. Very speedily, by the natural progress of the country, they would amount to a million, and soon after exceed it. A million therefore is a moderate ratio.

be relinquished are, with every solemnity of law, pledged for paying the interest and redeeming the principal of our public debt, foreign and domestic. As to the interest, and such parts of the principal as by the original constitution of the debts are payable by annual instalments, the appropriation is absolute. As to the residue, it is qualified. On the 3d of March, 1795, was passed an act of Congress which forms a main pillar in the fabric of our public debt; which, maturing and perfecting the establishment of a *sinking fund*, endeavors, with peculiar solicitude, to render it adequate, effectual, and inviolable. By the 8th section of this act it is provided, "That *all surpluses* of the revenue, which *shall remain at the end* of any year, and which at the next session of Congress shall not be otherwise appropriated or reserved by law, shall *ipso facto* become a part of the *Sinking Fund.*" This fund, by other provisions of the same act, is *vested* in commissioners *in trust*, to be applied to the redemption of the debt, by reimbursement or by purchase, until the whole shall be extinguished; and the faith of the United States is expressly engaged, that the monies which are to constitute the fund shall inviolably remain so appropriated and vested, until the redemption of the debt shall be completely effected.

The simple statement of these provisions goes far to confirm the character which we have given to the proposition. But a distinct examination of the reasons by which it is supported, will, when taken in connection with those provisions, place beyond doubt its absurd and pernicious tendency.

The first inducement offered for relinquishing the internal revenue, is a *reasonable ground of confidence* that it may safely be dispensed with.

When it is considered that we are in the very crisis of an important change of situation; passing from a state in which neutrality had procured to our commerce, and to the revenues depending on it, a great artificial increase—with good reason to look for a diminution, and without satisfactory *data* to enable us to fix the extent of this diminution,—can any thing be more rash, more empirical, than voluntarily to abandon a valuable and growing branch of income of which we are already in possession? Can it be said that merely "*a reasonable ground* of confidence," is a sufficient warrant for so important a surrender? Surely we ought to have been told that there was at least a moral certainty of the fact. But even this would not have been deemed enough by a prudent statesman. Nothing less than *experimental certainty* ought to have been relied upon. There was no pressure of circumstances making it proper to precipitate the measure. It would have been ridiculous to pretend that the burden is so heavy, as to demand immediate relief; and without this incentive to relinquishment, experience ought undoubtedly to have been taken as the only fit and sure guide.

Not only is it problematical what the present duties on imports will for succeeding years produce; but it is in a degree questionable, whether it may not be found necessary to reduce the rates. That they are now high, when compared with the commercial capital of our country, is not to be denied,

and whether they may not be found too high for a beneficial course of our trade, is yet to be decided by experiment. The latter augmentations of the rates of duty were made at times and under circumstances in the situations of this and of other countries, which forbid us to regard past experience as conclusive on the point.

Should it be said in answer, that the revenues can hereafter be renewed, if on trial it shall be found that they have been prematurely abandoned, the decisive reply is, that this is to invert the natural order of just reasoning. Were it now the question, whether such revenues should be created, in anticipation of a possible deficiency, the correct answer would be, let experiment first ascertain the necessity: as they already exist, on a question to abolish them, the answer equally ought to be, let experience first show them to be unnecessary.

But how can they be unnecessary? Let us grant that the remaining sources will be equal to the purposes enumerated in the message, does it follow that it will not still be wise to retain the internal revenue? Is it not desirable that government should have it in its power to discharge the debt faster than may have been contemplated? Is not this a felicity in our situation which ought to be improved; a precious item in the public fortune which ought not rashly to be squandered? But it is not even true that the laws have exclusively contemplated a definite period for the ultimate redemption of the entire debt. They have only made a determinate provision for its extinguishment, at all events, within a given term of

years. But, anxious to shorten the period, they, in the clause which has been quoted respecting the surpluses of revenue, have made an auxiliary provision for the purpose of abridging that term. The message, while it goes to impair the efficacy of the principal provision, proposes formally to renounce the auxiliary, and thus to disappoint the provident care of the laws to accelerate the discharge of the debt.

How is this reconcilable with the wanton and unjust clamors heretofore vented against those who projected and established our present system of public credit; charging them with a design to perpetuate the debt, under the pretext that *a public debt was a public blessing*? It is not to be forgotten, that in these clamors Mr. Jefferson liberally participated! Now, it seems, the tone is entirely changed. The past administrations, who had so long been calumniated by the imputation of that pernicious design, are of a sudden discovered to have done too much for the speedy discharge of the debt, and its duration is to be prolonged, by throwing away a part of the fund destined for its prompt redemption. Wonderful union of consistency and wisdom!

Before we yield our approbation to the proposal, we ought to have a guaranty for the continuance of our peace, long enough to give effect to the leisurely operation of that residue of the fund which it is intended to retain; else war, which never fails to bring with it an accumulation of debt, may intervene, and we may then rapidly hasten to that period when the exigencies of government may render it necessary

to appropriate too large a portion of the *earnings of labor*. To guard against so unfortunate a result, towards which there is always too great a tendency in the affairs of nations, our past administrations have evinced a deep foresight, and exercised a truly patriotic care. Unhappy will it be, if any succeeding projector shall be permitted to frustrate their salutary plan.

It has been seen, that the message anticipates and attempts to answer objections to the dereliction of revenue: it is said, that "sound principles will not permit us to tax the industry of our citizens to accumulate treasure for wars to happen we know not when, and which might not perhaps happen but for the temptations offered by that treasure." Unless, however, the *accumulation of treasure* be the necessary consequence of retaining the revenue, this argument is evidently futile. But the President had only to open our statute book to learn, that this consequence is chimerical. All future surpluses of revenue being already eventually appropriated to the discharge of the public debt, it follows that till the whole debt shall have been extinguished, there could be no *accumulation of treasure*—no spoil from that source to tempt the rapacity of a greedy invader. Here we fix the charge of ignorance of our financial arrangements; to which there can be no alternative but a deliberate design to delude the people. Between the two, let the worshippers of the idol make their option.

LUCIUS CRASSUS.

NO. III

December 24, 1801.

Had our laws been less provident than they have been, yet must it give us a very humble idea of the talents of our President as a statesman, to find him embarrassed between an absolute abandonment of revenue, and an inconvenient accumulation of treasure. Pursuing the doctrine professed by his *sect*, that our public debt is a national *curse*, which cannot too promptly be removed, and adhering to the assurance which he has virtually given,[1] that a sponge, *the favorite instrument*, shall not be employed for the purpose, how has it happened that he should have overlooked the simple and obvious expedient of using the supposed excess of income as a remedy for so great a mischief?

After all we have heard in times past, it would ill become either the head or any member of the *orthodox sect* to contend, that a too rapid reimbursement of the debt might be attended with evils. In courtesy, however, this shall be supposed to be urged by some new convert, who has not entirely shaken off the prejudices of former modes of thinking; and it shall be examined, whether this argument will afford a justification of the measure recommended.

It shall not be denied, that the immediate payment of our whole debt, if practicable, would be likely to be injurious in various ways. It would, in the first instance, produce a money-plethora (if the

[1] One of the essential principles of government is, "*the honest payment of our debts and the sacred preservation of the public faith.*" —INAUGURAL SPEECH.

phrase may be allowed), which experience has shown to be inauspicious to the energies, and especially to the morality and industry, of a nation. The quick efflux of this money to pay a considerable part of the debt in the hands of foreigners, and to procure from abroad the means of gratifying an increased extravagance, would, after some time, substitute a too great vacuity to a too great fulness, leaving us to struggle with the bad habits incident to the latter state, and with the embarrassments of a defective circulation. To these, other reasons might be added, which, though equally just and solid, are omitted as being more liable to dispute.

Though an extreme case is here presented, the immediate reimbursement of the entire debt, yet it must be admitted that the same considerations are applicable in a less degree to a summary or very rapid repayment by large instalments. But the answer to all this is, that it would have been full time to adopt precautionary measures against evils from such a source, when experience has realized the danger. Till such time it is certainly the highest wisdom to continue the employment of a fund which is already provided, and without overburdening the people, for the all-important purpose of exonerating our nation from debt, and of placing it in a condition, with competent resources to meet future contingencies which may threaten its safety. On the other hand, is it not a mark of the highest improvidence and folly, to throw away an important part of this fund, on the mere speculation that it may possibly be superfluous?

But admitting it to be clearly ascertained, that the fund is greater than is requisite to extinguish the debt with convenient celerity, does it follow that the excess, if retained, must be suffered to accumulate, and that no different method could have been found to employ it which would have been productive of adequate utility?

Whatever diversity of opinion there may be with regard to military and naval preparations, for the defence and security of the country, there are some things in which all well-informed and reflecting men unite. In order that upon the breaking out of a war there may be a sufficient supply of warlike implements, together with the means of speedily creating a navy, arsenals, foundries, dock-yards, magazines (especially of materials for the construction and equipment of ships), are by all deemed eligible objects of public care. To provide for these objects upon a competent, though moderate scale, will be attended with expense so considerable, as to leave nothing to spare from the amount of our present income. To persons unacquainted with the subject, the quantities of several articles on hand may appear ample; but to good judges there is hardly any one class of supplies which will not be thought to require much augmentation. As far as a navy is concerned, the deficiency is palpable.

If dock-yards are to be established in earnest, they ought certainly to be well protected. For this purpose, fortifications of a substantial and durable nature, very different from the temporary shifts hitherto adopted, ought to be erected. And if the

President will inquire into the cost of even these trifling constructions, in the instances where they have been managed with all practicable economy, he will become convinced that the erection of proper works would call for an expenditure forbidding the supposition of a superfluity of revenue.

In addition to objects of national security, there are many purposes of great public utility to which the revenues in question might be applied. The improvement of the communications between the different parts of our country is an object well worthy of the national purse, and one which would abundantly repay *to labor* the portion of its *earnings*, which may have been borrowed for the purpose. To provide roads and bridges is within the direct purview of the Constitution. In many parts of the country, especially in the Western Territory, a matter in which the Atlantic States are equally interested, aqueducts and canals would also be fit subjects of pecuniary aid, from the general government. In France, England, and other parts of Europe, institutions exist supported by public contributions, which eminently promote agriculture and the arts. Such institutions merit imitation by our government; they are of the number of those which directly and sensibly recompense *labor* for what it lends to their agency.

To suggestions of the last kind, the adepts of the new school have a ready answer: *Industry will succeed and prosper in proportion as it is left to the exertions of individual enterprise.* This favorite dogma, when taken as a general rule, is true; but as an

exclusive one, it is false, and leads to error in the administration of public affairs. In matters of industry, human enterprise ought, doubtless, to be left free in the main; not fettered by too much regulation; but practical politicians know that it may be beneficially stimulated by prudent aids and encouragements on the part of the government. This is proved by numerous examples too tedious to be cited; examples which will be neglected only by indolent and temporizing rulers, who love to loll in the lap of epicurean ease, and seem to imagine that to govern well, is to amuse the wondering multitude with sagacious aphorisms and oracular sayings.

What has been observed is sufficient to render it manifest that, independent of the extinguishment of the debt, the revenues proposed to be yielded up would find ample and very useful employment for a variety of public purposes. Already in the possession of so valuable a resource; having surmounted the difficulties which, from the opinions and habits of our citizens, obstruct, in this, more than in any other country, every new provision for adding to our public income; certainly without a colorable pretence of their being a grievous or undue pressure on the community—how foolish will it be to resign the boon, perhaps in a short time to be compelled again to resort to it; and for that purpose to hazard a repetition of the obstacles which have been before encountered and overcome,—obstacles which gave birth to one insurrection, and may give birth to another! Infatuated must be the councils from which so injurious a project has proceeded!

But admitting the position, that there is an excess of income which ought to be relinquished, still the proposal to surrender the *internal* revenue is impolitic. It ought to be carefully preserved, as not being exposed to the casualties incident to our intercourse with foreign nations, and therefore the most certain. It ought to be preserved, as reaching to descriptions of persons who are not proportionately affected by the impost, and as tending, for this reason, to distribute the public burden more equitably. It ought to be preserved, because if revenue can really be spared, it is best to do it in such a manner as will conduce to the relief or advancement of our navigation and commerce. Rather let the tonnage duty on American vessels be abolished, and let the duties be lessened on some particular articles on which they may press with inconvenient weight. Let not the merchant be provoked to attempt to evade the duties by the sentiment that his ease or interest is disregarded, and that his capital alone is to be clogged and incumbered by the demands of the Treasury.

But who and what are the merchants, when compared with the patriotic votaries of whiskey in Pennsylvania and Virginia?

LUCIUS CRASSUS.

NO. IV

December 26, 1801.

It is a matter of surprise to observe a proposition to diminish the revenue, associated with intimations which appear to contemplate war. The suggestions

in the message respecting the Barbary States plainly enough imply that treaties are found to be too feeble cords to bind them; and that a resort to coercive means will probably be requisite to enforce a greater sense of justice towards us. Accordingly, as a comment on this hint, we have seen a resolution brought into the House of Representatives, authorizing the President to take measures effectually to protect our commerce against those states. Believing it to be a sound position, that these predatory nations will never be brought to respect sufficiently the rights of this country, whether derived from nature or from compact, without first being made to feel its power, there is no disposition to condemn the efficacious employment of force. Yet, considering the maxims by which those states are governed, and the obstinacy which they have evinced upon other occasions, it is likely that a policy of this sort will be attended with considerable, and with no very temporary, expense. This alone is conceived to be a conclusive reason against parting with any portion of our present income; nothing could be less advisable, at a moment when there is the prospect, if not the project, of a general rupture with those powers.

Hitherto the proposal for sacrificing the internal revenue has been tried almost wholly by the test of expediency; it is time to put it to a severe test—that of *right. Can the proposed abolition take effect without impairing the* PUBLIC FAITH?

This is a question of infinite moment to the character of our government—to the prosperity of our nation. If it is to be answered in the negative, it

must be matter of profound regret that a proposal which could give rise to it should have come from the First Magistrate of the United States.

It is hardly necessary to premise, by way of explanation, that *to pledge or appropriate* funds for a public debt is, in effect, to *mortgage* them to the public creditors *for their security*. Retracing our financial system to its commencement, we find the impost and the excise on distilled spirits repeatedly and positively pledged, first, for the payment and interest of the debt, next, for the reimbursement of certain instalments of the principal. It is true, the appropriation is qualified by the words, "so much as may be necessary," but the *public faith* is engaged in express terms, that *both the funds* shall *continue* to be levied and collected, until the whole debt shall be discharged; with the single reserve, that the government shall be at liberty to *substitute* other funds of *equal amount*. It follows that these *two items* of revenue constitute a *joint* fund for the security of the public creditor, co-extensive in duration with the existence of any portion of the debt; and it is to be inferred that the government, contemplating the possibility of a deficiency in *one*, intended that the *other* should serve as an *auxiliary*, and that the *co-operation* of the *two* should effectually guard the creditor against the fluctuations and casualties to which *either singly* might be exposed. Anticipating, however, the possibility that the one or the other, in whole or in part, might in practice be found inconvenient, a right was reserved to *exchange* either for an *adequate* substitute. But it is conceived that this

does not imply the right to exchange *the one* for *the other*. The effect would be essentially different in the two cases: in the first there would always be *two funds*, aggregately of the same or similar force and value, to secure the creditor; in the last there would be *only one:* from being double, the security would become single.

This mode of reasoning is the only one upon which the rights and the interests of the creditors can safely rest; it is plain and intelligible, and avoids the dangers of erroneous speculations about the *separate sufficiency* of the respective funds. Admitting, however, for the sake of the argument, that this is too rigid a construction of the contract, and that when *one* of the *two* funds should have acquired a stable increase, which would render it equal to the purpose of the pledge, it might then be made to stand in the place of both; yet, surely, neither the purity of the public faith, nor the safety of the creditor, will endure the application of this principle to any other, than to an ascertained result. Neither, certainly, will tolerate, that merely a *reasonable ground of confidence* shall authorize so material an alteration in the essence of the security which protects the debt.

The foregoing reasoning as to the question of *right*, may be further elucidated by a particular provision in the act[1] which introduced the excise on distilled spirits. After a *permanent* appropriation of the proceeds of the tax to the interest of the debt, it provides that the surplus, if any there shall be, at

[1] Passed March 3, 1791.

the end of each year *shall be* applied to the reduction of the principal; unless the surplus or any part of it should be required for public exigencies of the United States, and should be so appropriated by special "acts of Congress." While at this early period of our finances it was not thought expedient to appropriate this surplus *absolutely* to the *sinking fund*, it was contemplated that it should not be diverted, except for *public exigencies*. Gratuitously to relinquish it, is therefore contrary to the letter as well as to the spirit of the original institution of the fund. The like observations, though with less force, apply to the provision noticed in another number, respecting the surpluses of the revenue generally, which, as we have seen, are all appropriated to the sinking fund. At the session of Congress immediately succeeding any year in which such surpluses may accrue, they may be specially *appropriated* or *reserved* by law, for other purposes; but, if this be not done, they are then to go of course to the sinking fund. To *appropriate* or to *reserve*, plainly, can never mean to *relinquish*. The true meaning of the provision appears, therefore, to be, that though Congress, under the restriction expressed as to the time, may *appropriate* or *reserve* these surpluses for other objects of the public service, yet if not wanted for such other objects, they shall continue to enure to the fund for the reduction of the debt, so long as, by the laws regulating their duration, they are continued to be levied.

Thus, on whatever side it is viewed, there is a temerity and a levity in the proposition which con-

founds and amazes. If, unhappily, it shall receive the sanction of Congress, there will remain nothing in principle of our system of public credit—nothing on which the confidence of the creditor can safely repose. The precedent of a fatal innovation will have been established, and its extension to a total annihilation of the security would be a step not much more violent than that by which the inroad had commenced. But it is devoutly to be hoped, that the delirium of party spirit will not so far transport the *legislative* representatives of the nation, as to induce *them* to put the seal to a measure, as motiveless—as precipitate—as impolitic—as *faithless*—as could have been dictated, even by deliberate hostility to the vital principles of our national credit. Peculiarly the guardians of the PUBLIC FAITH, and of the *public purse*, they surely will not consent to betray the one, and impoverish the other, through an abject and criminal complaisance.

It is a fact not unknown to himself, that abroad, as well as at home, a diffidence has been entertained of the opinions and views of the person now at the head of our government, with regard to our system of public credit. This undoubtedly ought to have been with him a strong reason for caution, especially at so early a stage of his administration, as to any step which might strengthen that diffidence, which might be in the least equivocal in its tendency. Nor ought it to have been overlooked, that the interest of the State and a regard for his own reputation demanded this caution. The appearance of instability in the plans of a government, particularly respecting

its finances, can never fail to make injurious impressions. To a government, the character of which has not yet been established by time, the example of sudden and questionable innovations may be expected to be in the highest degree detrimental. Prudent men everywhere are apt to take the alarm at great changes not manifestly beneficial and proper—a disposition which has been much increased by the terrible events of the present revolutionary era. Yet, disregarding these salutary and obvious reflections, the President has ventured, in the very infancy of his administration, upon the bold and unjustifiable step of recommending to the legislative body a renunciation of the whole *internal revenue* of the country; though the nation is at this moment encumbered with a considerable public debt, and though that very revenue is, by the existing laws, an *established fund* for its discharge.

What, then, are we to think of the ostentatious assurance in the Inaugural Speech as to the preservation of PUBLIC FAITH? Was it given merely to amuse with agreeable but deceptive sounds? Is it possible that it could have been intended to conceal the insidious design of aiming a deadly blow at a system which was opposed in its origin, and has been calumniated in every stage of its progress?

Alas! how deplorable will it be, should it ever become proverbial, that a President of the United States, like the *Weird Sisters* in *Macbeth*, "*Keeps his word of promise to our ear, but breaks it to our hope!*"

LUCIUS CRASSUS.

NO. V

December 29, 1801.

In the rage for change, or under the stimulus of a deep-rooted animosity against the former administrations, or for the sake of gaining popular favor by a profuse display of extraordinary zeal for economy, even our judiciary system has not passed unassailed. The attack here is not so open as that on the revenue; but when we are told that the States individually have "*principal* care of our persons, our property, and our reputation, constituting the great field of human concerns; and that, therefore, *we may well doubt whether our organization is not too complicated, too expensive;* whether offices and officers have not been multiplied unnecessarily, and sometimes injuriously to the service they were meant to promote"; when afterwards it is observed that "the judiciary system will, *of course*, present itself to the contemplation of Congress"; and when it appears that pains had been taken to form and communicate a numerical list of all the causes decided since the first establishment of the courts, in order that Congress might be able to judge of the proportion which the institution bears to the business;—with all these indications, it is not to be misunderstood that the intention was unequivocally to recommend *material* alterations in the system.

No bad thermometer of the capacity of our Chief Magistrate for government is furnished by the rule which he offers for judging of the utility of the Federal Courts; namely, the exact *number* of causes which have been by them decided. There is hardly

any stronger symptom of a pigmy mind, than a propensity to allow greater weight to *secondary* than to *primary* considerations.

It ought, at least, to have been adverted to, that if this circumstance were a perfect criterion, it is yet too early to apply it, especially to the courts recently erected; and it might have merited reflection, that it would have been prudent to wait for a more advanced period of the presidential term, to ascertain what influence the great change which has lately happened in our *public functionaries* may have on the confidence, which in many parts of the Union has heretofore been reposed in the State Courts, so as to prevent a preference of those of the United States.

But, to enable us duly to appreciate the wisdom of the projected innovation, it is necessary to review the objects which were designed to be accomplished by the arrangement of the judiciary power, as it is seen in the Constitution, and to examine the organization which has been adopted, to give effect to those objects.

It is well known to all who were acquainted with the situation of our public affairs when the Constitution was framed, and it is to be inferred from the provisions of the instrument itself, that the objects contemplated, were: 1st. To provide a faithful and efficient organ for carrying into execution the laws of the United States, which otherwise would be a *dead letter*. 2d. To secure the fair interpretation and execution of our treaties with foreign nations. 3d. To maintain harmony between the individual States;

not only by an independent and impartial mode of determining controversies between them, but by frustrating the effects of partial laws in any one, injurious to the rights of the citizens of another. 4th. To guard generally against invasions of property and right, by fraudulent and oppressive laws of particular States, enforced by their own tribunals. 5th. To guard the rights and conciliate the confidence of foreigners, by giving them the option of tribunals created by, and responsible to the general government; which, having the immediate charge of our external relations, including the care of our national peace, might be expected to be more tenacious of such an administration of justice as would leave to the citizens of other countries no real cause of complaint. 6th. To protect reciprocally the rights and inspire mutually the confidence of the citizens of different States in their intercourse with each other, by enabling them to resort to tribunals so constituted as to be essentially free from local bias or partiality. 7th. To give the citizens of each State a fair chance of impartial justice through the medium of those tribunals, in cases in which the titles to property might depend on the conflicting grants of different States. These were the immensely important objects to be attained by the institution of an adequate judiciary power in the government of the United States. Nor did its institution depend upon mere speculative opinion, though, indeed, even that would have been sufficient to indicate the expediency of the measure; but experience had actually, in a variety of ways, demonstrated its necessity.

The treaties of the United States had been infracted by State laws, put in execution by State judicatories. The rights of property had been invaded by the same means, in numerous instances, as well with respect to foreigners as to citizens; as well between citizens of different States as between citizens of the same State. There were many cases in which lands were held or claimed under adverse grants of different States, having rival pretensions; and in respect to which, the local tribunals, even if not fettered by the local laws, could hardly be expected to be impartial. In several of the States the courts were so constituted as not to afford sufficient assurance of a pure, enlightened, and independent administration of justice; an evil which in some of them still continues. From these different sources serious mischiefs have been felt. The interests of the United States, in their foreign concerns, had suffered; their reputation had been tarnished; their peace endangered; their mutual harmony had been disturbed or menaced; creditors in numerous instances had been ruined or very much injured; confidence in pecuniary transactions had been destroyed, and the springs of industry had been proportionably relaxed. To these circumstances, as much, perhaps, as any other that accompanied a defective social organization, are we to attribute that miserable and prostrate situation of our affairs which, immediately before the establishment of our present national Constitution, filled every intelligent lover of his country with affliction and mortification. To the institution of a competent judiciary, little less than

to any one provision in that Constitution, is to be ascribed the rapid and salutary renovation of our affairs, which succeeded.

The enumeration [1] of the component parts of the judicial power, in the Constitution, has an evident eye to the several objects which have been stated. And considering their vast magnitude, no sound politician will doubt that the principal question with the administration ought to be, how to give the greatest efficacy to this essential part of the system; in comparison with which the more or less of expense must be a matter of trivial moment. The difference of expense between an enlarged and a contracted plan may be deemed an atom in the great scale of national expenditure. The fulfilment of the important ends of this part of our constitutional plan, though with but a small degree of additional energy, facility, or convenience, must infinitely overbalance the consideration of such difference of expense.

The number of causes which have been tried in these courts, as already intimated, can furnish but a very imperfect test by which to decide upon their utility or necessity. Their existence alone has a

[1] "SEC. II. The judicial power shall extend to all cases in law and equity, arising under this Constitution; the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State, claiming lands under grants of different States; and between a State, or the citizens thereof, and foreign states, citizens, or subjects."

powerful and salutary effect. The liberty to use them, even where it is not often exercised, inspires confidence in the intercourse of business. They are viewed as beneficent guardians, whose protection may be claimed when necessary. They induce caution in the State Courts, and promote in them a more attentive, if not a more able administration of justice. Though in some districts of the Union the Federal Courts are seldom resorted to, in others they are used in an extensive degree, particularly as between foreigners and citizens, and between citizens of different States.

That their organization throughout the United States ought to be uniform will not be denied, and it is evident that it ought to be regulated by the situation of those parts in which a greater degree of employment denotes the courts to be most necessary. Of consequence, if the quantity of business were at all a guide, the scenes in which there is the greatest employment for the Federal Courts ought to furnish the rule for computation; it ought not to be sought for in the aggregate of business throughout the Union. In reference to this point, it is likewise material to observe that, from the manner in which the Federal Courts were constituted, previous to the last arrangement, *the organization* of the State Courts was so much better adapted to expedition, as to afford a strong motive for giving them a preference. The establishment of Circuit Courts, as now modified, will vary that circumstance, and thus attract more business; but it is evident that it must require a course of years fully to exemplify its opera-

tion. To attempt, therefore, to draw important inferences from the short experience hitherto had, is worse than puerile.

LUCIUS CRASSUS.

NO. VI

January, 1802.

In answer to the observations in the last number, it may perhaps be said, that the message meant nothing more than to condemn the recent *multiplication* of Federal Courts, and to bring them back to their original organization: considering that as adequate to all the purposes of the Constitution; to all the ends of justice and policy.

Towards forming a right judgment on this point, it may be of service to those who are not familiar with the subject, to state briefly what was the former and what is the present establishment.

The former consisted of one Supreme Court with six judges, who twice a year made the tour of the United States, distributed into three circuits, for the trial of causes arising in the respective districts of each circuit; and of fifteen District Courts, each having a single judge. The present consists of one Supreme Court with the like number of judges, to be reduced on the first vacancy happening, to five; of six Circuit Courts, having three distinct judges each, excepting one circuit, which has only a single circuit judge; and of twenty-two District Courts, with a judge for each as before. In both plans, the Supreme Court is to hold two terms at the seat of government, and the Circuit Courts are to be holden twice a year

in each district. The material difference in the two, as it respects the organs by which they are executed, is reducible to the creation of twenty-three additional judges; sixteen for the six Circuit Courts, seven for the superadded District Courts, and the addition of the necessary clerks, marshals, and subordinate officers of seven courts. This shows at a single view, that the difference of expense, as applied to the United States, is of trifling consideration.

But here an inquiry naturally presents itself: why was the latter plan substituted to the former more economical one? The solution is easy and satisfactory. The first was inadequate to its object, and incapable of being carried into execution. The extent of the United States is manifestly too large for the due attendance of the six judges in the Circuit Courts. The immense journeys they were obliged to perform kept them from their families for several successive months in the year; this rendered the office a grievous burden, and had a strong tendency to banish or exclude men of the best talents and characters from these important stations. It is known to have been no light inducement with one Chief-Justice, whose health was delicate, to quit that office for another attended with less bodily fatigue; and it is well understood that other important members of the Supreme Court were prepared to resign their situations, if there had not been some alterations of the kind which has taken place. It was also no uncommon circumstance for temporary interruption in the health of particular judges, of whom only one was attached to a circuit, to occasion a failure in the sessions of the

courts; to the no small disappointment, vexation, and loss of the suitor. At any rate the necessity of visiting, within a given time, the numerous parts of an extensive circuit, unavoidably rendered the sessions of each court so short, that, where suits were in any degree multiplied or intricate, there was not time to get through the business with due deliberation. Besides all this, the incessant fatigues of the judges of the Supreme Court, and their long and frequent absences from home, prevented that continued attention to their studies, which even the most learned will confess to be necessary for those intrusted in the last resort with questions frequently novel, always of magnitude, affecting not only the property of individuals, but the rights of foreign nations, and the Constitution of the country.

For these reasons it became necessary either to renounce the Circuit Courts or to constitute them differently: the latter was preferred. The United States were divided into six circuits, with a proper number of judges to preside over each. No man of discernment will pretend that the number of circuits is too great. Surely three States forming an area equal to that possessed by some of the first powers of Europe, must afford a quantity of business sufficient to employ three judges on a circuit, twice a year; and certainly not less than three will suffice for the dispatch of business, whether the number of cases be small or great. The inconsiderable addition made to the number of the District Courts will hardly excite criticism, and does not, therefore, claim a particular discussion, nor will their necessity be

generally questioned. They are almost continually occupied with revenue and admiralty causes, besides the great employment collaterally given to the judges in the execution of the Bankrupt Act, which probably must increase instead of being diminished.

Perhaps it may be contended that the Circuit Courts ought to be abolished altogether, and the business for which they are designed left to the State Courts, with a right of appeal to the Supreme Courts of the United States. Indeed, it is probable that this was the true design of the intimation in the message: *A disposition to magnify the importance of the particular States, in derogation from that of the United States*, is a feature in that communication not to be mistaken. But to such a scheme there are insuperable objections. The right of appeal is by no means equivalent to the right of applying, in the first instance, to a tribunal agreeable to the suitor. The *desideratum* is to have impartial justice, at a moderate expense, administered "promptly and without delay"; not to be obliged to seek it through the long, and tedious, and expensive process of an appeal. It is true, that in causes of sufficient magnitude an appeal ought to be open; which includes the possibility of going through that process; but when the courts of original jurisdiction are so constituted as not only to deserve but to inspire confidence, appeals, from the inevitable inconvenience attached to them, are exceptions to the general rule of redress; where the contrary is the situation, they become the general rule itself. Appeals will then be multiplied to a pernicious extent, while the difficul-

ties to which they are liable operate in numerous instances as a preventive of justice, because they fall with most weight on the least wealthy suitor. It is to be remembered that the cases in which the Federal Courts would be preferred, are those where there would exist some distrust of the State Courts, and this distrust would be a fruitful source of appeals. To say that there could be no good cause for distrust, and that the danger of it is imaginary, is to be wiser than experience, and wiser than the Constitution. The first officer of the government, when speaking in his official capacity, has no right to attempt to be thus wise. His duty exacts of him that he should respectfully acquiesce in the spirit and ideas of that instrument under which he is appointed.

The detail would be invidious, perhaps injurious; else it would be easy to show that however great the confidence to which the tribunals in some of the States are entitled, there is just cause for suspicion as to those of others; and that in respect to a still greater number, it would be inexpedient to delegate to them the care of interests which are specially and properly confided to the Government of the United States.

The plan of using the State Courts as substitutes for the Circuit Courts of the Union, is objectionable in another view. The citizens of the United States have a right to expect from those who administer our government, the efficacious enjoyment of those privileges, as suitors, for which the Constitution has provided. To *turn them round*, from the enjoyment of those privileges, in originating their causes, to the eventual and dilatory resource of an appeal, is in a

great degree to defeat the object contemplated. This is a consideration of much real weight, especially to the merchants in our commercial States.

In the investigation of our subject, it is not to be forgotten that the right to employ the agency of the State Courts, for executing the laws of the Union, is liable to question, and has, in fact, been seriously questioned. This circumstance renders it the more indispensable, that the permanent organization of the Federal Judiciary should be adapted to the prompt and vigorous execution of those laws.

The right of Congress to discontinue judges once appointed, by the abrogation of the courts for which they were appointed, especially as it relates to their emoluments, offers matter for a very nice discussion but which shall now be only superficially touched.

On the one hand, it is not easy to maintain that Congress cannot abolish courts which, having been once instituted, are found in practice to be inconvenient and unnecessary. On the other hand, if it may be done, so as to include the annihilation of existing judges, it is evident that the measure may be used to defeat that clause of the Constitution which renders the duration and the emoluments of the judicial office coëxtensive with the good behavior of the officer, an object essential to the independence of the judges, the security of the citizen, and the preservation of the government.

As a medium which may reconcile opposite ideas, and obviate opposite inconveniences, it would, perhaps, be the best and safest practical construction to say that, though Congress may abolish the courts,

yet shall the actual judges retain their character and their emoluments, with the authorities of office, so far as they can be exercised elsewhere than in the courts. For this construction a precedent exists in the last arrangement of the Judiciary. Though the number of the judges of the Supreme Court is reduced from six to five, yet the *actual* reduction is wisely deferred to the *happening of a vacancy*. The expense of continuing the salaries of the existing incumbents cannot prudently be put in competition with the advantage of guarding from invasion one of the most precious provisions in the Constitution. Nor ought it to be without its weight, that this modification will best comport with good faith, on the part of government, towards those who had been invited to accept offices, to be held, not by an uncertain tenure, but during *good behavior*.

Weighing maturely all the very important and very delicate considerations which appertain to the subject, would a wise or prudent statesman hazard the consequences of immediately unmaking, at one session, courts and judges, which had only been called into being at the one preceding? Delectable indeed must be the work of disorganization to a mind which can thus rashly advance in its prosecution!—Infatuated must that people be who do not open their eyes to projects so intemperate—so mischievous!—Who does not see what is the ultimate object? *Delenda est Carthago*—Ill-fated Constitution, which Americans had fondly hoped would continue for ages, the guardian of public liberty, the source of national prosperity! LUCIUS CRASSUS.

NO. VII

January 7, 1802.

The next most exceptionable feature in the message, is the proposal to abolish all restriction on naturalization, arising from a previous residence. In this the President is not more at variance with the concurrent maxims of all commentators on popular governments, than he is with himself. The Notes on Virginia are in direct contradiction to the message, and furnish us with strong reasons against the policy now recommended. The passage alluded to is here presented. Speaking of the *population* of America, Mr. Jefferson says: "Here I will beg leave to propose a doubt. The present desire of America, is to produce rapid population, by as great *importations of foreigners* as possible. *But is this founded in good policy?*" "Are there no inconveniences to be thrown into the scale, against the advantage expected from a multiplication of numbers, by the *importation of foreigners?* It is for the happiness of those united in society, to harmonize as much as possible, in matters which they must of necessity transact together. Civil government being the sole object of forming societies, its administration must be conducted by common consent. Every species of government has its specific principles. Ours, perhaps, are more peculiar than those of any other in the universe. *It is a composition of the freest principles of the English Constitution*, with others, derived from natural right and reason. To these, nothing can be more opposed than the maxims of absolute monarchies. Yet from such, we are to

expect the *greatest number of emigrants. They will bring with them the principles of the governments they leave, imbibed in their early youth; or if able to throw them off, it will be in exchange for an unbounded licentiousness, passing as is usual, from one extreme to another. It would be a miracle were they to stop precisely at the point of temperate liberty. Their principles with their language, they will transmit to their children.* In proportion to their numbers, *they will share with us in the legislation.* They will infuse *into it their spirit, warp and bias its direction, and render it a heterogeneous, incoherent, distracted mass.* I may appeal to experience, during the present contest, for a verification of these conjectures; but if they be not certain in event, are they not possible, are they not probable? *Is it not safer to wait with patience for the attainment of any degree of population desired or expected?* May not our government be more homogeneous, *more peaceable, more durable?* Suppose twenty millions of republican Americans, thrown all of a sudden into France, what would be the condition of that kingdom? If it would be more turbulent, less happy, less strong, we may believe that the addition of half a million of foreigners, to our present numbers, would produce a similar effect here." Thus wrote Mr. Jefferson in 1781.—Behold the reverse of the medal. The message of the President contains the following sentiments: "A denial of citizenship under a residence of fourteen years, is a denial to a great proportion of those who ask it, and controls a policy pursued from their first settlement, by many of these States, and *still believed of consequence to*

their prosperity. And shall we refuse to the unhappy fugitives from distress, *that hospitality which the savages of the wilderness extended to our fathers arriving in this land?* Shall oppressed humanity find no asylum on this globe? Might not the general character and capabilities of a citizen, be safely communicated to *every one* manifesting a bona-fide purpose of embarking his life and fortune permanently with us?"

But if gratitude can be allowed to form an excuse for inconsistency in a public character—in *the man of the people*—a strong plea of this sort may be urged in behalf of our President. *It is certain*, that had the late election been decided entirely by native citizens, had foreign auxiliaries been rejected on both sides, the man who ostentatiously vaunts that the *doors of public honor and confidence have been burst open to him*, would not now have been at the head of the American nation. Such a proof, then, of virtuous discernment in the *oppressed fugitives* had an imperious claim on him to a grateful return, and, without supposing any very uncommon share of *self-love*, would naturally be a strong reason for a revolution in his opinions.

The pathetic and plaintive exclamations by which the sentiment is enforced might be liable to much criticism, if we are to consider it in any other light than as a flourish of rhetoric. It might be asked in return, Does the right to *asylum or hospitality* carry with it the right to *suffrage and sovereignty?* And what, indeed, was the courteous reception which was given to our forefathers by the savages of the wild-

erness? When did these humane and philanthropic savages exercise the policy of incorporating strangers among themselves on their first arrival in the country? When did they admit them into their huts, to make part of their families? and when did they distinguish them by making them their sachems? Our histories and traditions have been more than apocryphal, if any thing like this kind and gentle treatment was really lavished by the much-belied savages upon our thankless forefathers. But the remark obtrudes itself. Had it all been true, prudence requires us to trace the history further and ask what has become of the nations of savages who exercised this policy, and who now occupies the territory which they then inhabited? Perhaps a lesson is here taught which ought not to be despised.

But we may venture to ask, What does the President really mean by insinuating that we treat aliens coming to this country with inhospitality? Do we not permit them quietly to land on our shores? Do we not protect them, equally with our own citizens, in their persons and reputation, in the acquisition and enjoyment of property? Are not our courts of justice open for them to seek redress of injuries? and are they not permitted peaceably to return to their own country whenever they please, and to carry with them all their effects? What, then, means this worse than idle declamation?

The impolicy of admitting foreigners to an immediate and unreserved participation in the right of suffrage, or in the sovereignty of a republic, is as much a received axiom as any thing in the science of

politics, and is verified by the experience of all ages. Among other instances, it is known that hardly any thing contributed more to the downfall of Rome than her precipitate communication of the privileges of citizenship to the inhabitants of Italy at large. And how terribly was Syracuse scourged by perpetual seditions, when, after the overthrow of the tyrants, a great number of foreigners were suddenly admitted to the rights of citizenship? Not only does ancient, but modern, and even domestic, story furnish evidence of what may be expected from the dispositions of foreigners when they get too early a footing in a country. Who wields the sceptre of France, and has erected a despotism on the ruins of her former government? *A foreigner.* Who rules the councils of our own ill-fated, unhappy country? and who stimulates persecution on the heads of its citizens for daring to maintain an opinion, and for daring to exercise the rights of suffrage? *A foreigner!* [1] Where, then, is the virtuous pride that once distinguished Americans? where the indignant spirit, which, in defence of principle, hazarded a revolution to attain that independence now *insidiously* attacked? LUCIUS CRASSUS.

NO. VIII

January 12, 1802.

Resuming the subject of our last paper, we proceed to trace still further the consequences that must

[1] This would seem to refer to Mr. Gallatin, Secretary of the Treasury, and yet the latter part of the question is so unlike Mr. Gallatin that we are almost forced to suppose that it is a fling at some one else who cannot be now identified.

result from a too unqualified admission of foreigners to an equal participation in our civil and political rights.

The safety of a republic depends essentially on the energy of a common national sentiment; on a uniformity of principles and habits; on the exemption of the citizens from foreign bias, and prejudice; and on that love of country which will almost invariably be found to be closely connected with birth, education, and family.

The opinion advanced in the Notes on Virginia is undoubtedly correct, that foreigners will generally be apt to bring with them attachments to the persons they have left behind; to the country of their nativity, and to its particular customs and manners. They will also entertain opinions on government congenial with those under which they have lived; or, if they should be led hither from a preference to ours, how extremely unlikely is it that they will bring with them that *temperate love of liberty*, so essential to real republicanism? There may, as to particular individuals, and at particular times, be occasional exceptions to these remarks, yet such is the general rule. The influx of foreigners must, therefore, tend to produce a heterogeneous compound; to change and corrupt the national spirit; to complicate and confound public opinion; to introduce foreign propensities. In the composition of society, the harmony of the ingredients is all-important, and whatever tends to a discordant intermixture must have an injurious tendency.

The United States have already felt the evils of

incorporating a large number of foreigners into their national mass; by promoting in different classes different predilections in favor of particular foreign nations, and antipathies against others, it has served very much to divide the community and to distract our councils. It has been often likely to compromit the interests of our own country in favor of another. The permanent effect of such a policy will be, that in times of great public danger there will be always a numerous body of men, of whom there may be just grounds of distrust; the suspicion alone will weaken the strength of the nation, but their force may be actually employed in assisting an invader.

In the infancy of the country, with a boundless waste to people, it was politic to give a facility to naturalization; but our situation is now changed. It appears from the last census that we have increased about one third in ten years; after allowing for what we have gained from abroad, it will be quite apparent that the natural progress of our own population is sufficiently rapid for strength, security, and settlement. By what has been said, it is not meant to contend for a total prohibition of the right of citizenship to strangers, nor even for the very long residence which is now a prerequisite to naturalization, and which of itself goes far towards a denial of that privilege. The present law was merely a temporary measure adopted under peculiar circumstances, and perhaps demands revision. But there is a wide difference between closing the door altogether and throwing it entirely open; between a postponement of fourteen years, and an immediate

admission to all the rights of citizenship. Some reasonable term ought to be allowed to enable aliens to get rid of foreign and acquire American attachments; to learn the principles and imbibe the spirit of our government; and to admit of a probability at least, of their feeling a real interest in our affairs. A residence of not less than five years ought to be required.

If the rights of naturalization may be communicated by parts, and it is not perceived why they may not, those peculiar to the conducting of business and the acquisition of property, might with propriety be at once conferred, upon receiving proof, by certain prescribed solemnities, of the intention of the candidates to become citizens; postponing all political privileges to the ultimate term. To admit foreigners indiscriminately to the rights of citizens, the moment they put foot in our country, as recommended in the message, would be nothing less than to admit the Grecian horse into the citadel of our liberty and sovereignty.

LUCIUS CRASSUS.

NO. IX

January 18, 1802.

The leading points of the message have been sufficiently canvassed, and it is believed to have been fully demonstrated that this communication is chargeable with all the faults which were imputed to it on the outset of the examination. We have shown that it has made, or attempted to make, prodigal sacrifices of constitutional energy, of sound

principle, and of public interest. In the doctrine respecting war, there is a senseless abandonment of the just and necessary authority of the executive department, in a point material to our national safety. In the proposal to relinquish the internal revenue, there is an attempt to establish a precedent ruinous to our public credit; calculated to *prolong the burden of the debt*, and to enfeeble the government, by depriving it of resources of great importance to its respectability, to the accomplishment of its most salutary plans, to the power of being useful. In the attack upon the judiciary establishment, there is a plain effort to impair that organ of the government: one on which its efficiency and success absolutely depend. In the recommendation to admit indiscriminately foreign emigrants to the privileges of American citizens, on their first entrance into our country, there is an attempt to break down every pale which has been erected for the preservation of a national spirit and a national character, and to let in the most powerful means of perverting and corrupting both the one and the other.

This is more than the moderate opponents of Mr. Jefferson's elevation ever feared from his administration; much more than the most wrong-headed of his own sect dared to hope; infinitely more than any one who had read the fair professions in his inaugural speech could have suspected. Reflecting men must be dismayed at the prospect before us. If such rapid strides have been hazarded in the very gristle of his administration, what may be expected when it shall have arrived at manhood? In vain was the

collected wisdom of America convened at Philadelphia; in vain were the anxious labors of a Washington bestowed. Their works are regarded as nothing better than empty bubbles, destined to be blown away by the mere breath of a disciple of *Turgot;* of a pupil of *Condorcet.*

Though the most prominent features of the message have been portrayed, and their deformity exhibited in true colors, there remain many less important traits not yet touched, which, however, will materially assist us in determining its true character. To particularize them with minuteness would employ more time and labor than the object deserves; yet to pass them by, wholly without remark, would be to forego valuable materials for illustrating the true nature of the performance under examination.

There remains to be cursorily noticed, a disposition in our Chief Magistrate, far more partial to the State governments, than to our National Government; to pull down rather than to build up our federal edifice—to vilify the past administrations of the latter—to court for himself popular favor by artifices not to be approved, either for their dignity, their candor, or their patriotism.

Why are we emphatically and fastidiously told, that "the States individually have the *principal care* of our *persons*, our *property* and our *reputation, constituting the great field of human concerns*"? Was it to render the State governments more dear to us, more the objects of affectionate solicitude? Nothing surely was necessary on this head; they are already

the favorites of the people, and if they do not forfeit the advantage by a most gross abuse of trust, must, by the very nature of the objects confided to them, continue always to be so. Was it to prevent too large a portion of affection being bestowed on the General Government? No pains on this score were requisite; not only for the reason just assigned, but for the further reason that the more peculiar objects of this government, though no less essential to our prosperity than those of the State governments, oblige it often to act upon the community in a manner more likely to produce aversion than fondness. Accordingly every day furnishes proof, that it is not the *spoiled child of the many*. On this point the high example of the President himself is pregnant with instruction. Was it to indicate the supreme importance of the State governments over that of the United States? This was as little useful as it was correct. Considering the vast variety of humors, prepossessions and localities which, in the much diversified composition of these States, militate against the weight and authority of the General Government, if union under that government is necessary, it can answer no valuable purpose to depreciate its importance in the eyes of the people. It is not correct; because to the care of the Federal Government are confided directly, those great, general interests on which all particular interests materially depend: our safety in respect to foreign nations; our tranquillity in respect to each other; the foreign and mutual commerce of the States; the establishment and regulation of the money of the country;

the management of our national finances; indirectly, the security of liberty by the guaranty of a republican form of government to each State; the security of property by interdicting any State from emitting paper money or from passing laws impairing the obligation of contracts (from both of which causes the rights of property had experienced serious injury); the prosperity of agriculture and manufactures, as intimately connected with that of commerce, and as depending in a variety of ways upon the agency of the General Government. In fine, it is the province of the General Government to manage the greatest number of those concerns in which the provident activity and exertion of *government* are of most importance to the people; and we have only to compare the state of our country antecedent to the establishment of the Federal Constitution, with what it has been since, to be convinced that the most operative causes of public prosperity depend upon that Constitution. It is not meant, by what has been said, to insinuate that the State governments are not extremely useful in their proper spheres; but the object is to guard against the mischiefs of exaggerating their importance, in derogation from that of the general right. Every attempt to do this, is, remotely, a stab at the union of these States; a blow to our collective existence as one people—and to all the blessings which are interwoven with that sacred fraternity.

If it be true, as insinuated, that "our organization is too complicated—too expensive," let it be simplified; let this, however, be done in such a manner

as not to mutilate, weaken, and eventually destroy, our present system, but to increase the energy and insure the duration of our National Government—THE ROCK OF OUR POLITICAL SALVATION.

In this insinuation, and in the suggestion that "offices and officers have been unnecessarily multiplied"; in the intimation that appropriations have not been sufficiently specific, and that the system of accountability to a single department has been disturbed; in this, and in other things too minute to be particularized, we discover new proofs of the disposition of the present executive, unjustly and indecorously to arraign his predecessors.

As far as the message undertakes to specify any instance of the improper complexity of our organization, namely, in the instance of the judiciary establishment, the late administration has been already vindicated.

As to the "*undue* multiplication of offices and officers," it is substantially a misrepresentation. It would be nothing less than a miracle if, in a small number of instances, it had not happened that particular offices and officers might have been dispensed with. For, in the early essays of a new government in making the various establishments relative to the affairs of a nation, some mistakes in this respect will arise, notwithstanding the greatest caution. It must happen to every government that, in the hurry of a new plan, some agents will occasionally be employed who may not be absolutely necessary; and this, where there is every inclination to economy. Similar things may have happened under our past

administration, but any competent judge who will take the trouble to examine, will be convinced that there is no just cause for blame in this particular.

The President has not pointed out the cases to which he applies the charge; but he has communicated information of some retrenchments which he has made, and probably intends that from these the truth of the accusation shall be inferred.

Three instances are particularly presented; these shall be briefly examined; it will be seen that they do not justify the imputation. They respect certain ministers at foreign courts; some navy agents at particular ports; and some inspectors of the revenue in particular States.

As to the first, it is believed to be a pretty just idea that we ought not greatly to multiply diplomatic agencies. Three permanent ones may, perhaps, be found sufficient in the future progress of our affairs: for *France*, *Spain*, and *England*. The expediency of having three is recognized by the conduct of our present Chief Magistrate. But others must be employed, and during particular seasons it may be wise to do it for a considerable length of time. Indeed, there is strong ground for an opinion entertained by very sensible men, that there ought to be a permanent minister at every court with which we have extensive commercial relations.

Two other ministers were employed by both the former administrations, one with Portugal, the other with Holland; and it is asserted without fear of denial, that when this was done by the first president, it was with the approbation of Mr. Jefferson himself.

One other minister was employed by the late President at the Court of Berlin.

A commercial treaty with Portugal is admitted on all hands to be particularly desirable, as very interesting branches of our commerce are carried on in the Portuguese dominions. We are still without any such treaty; to send to that court a diplomatic agent to endeavor to effect one, was a measure of evident propriety; to recall him before a treaty had been effected, must be of questionable expediency. The views and circumstances of nations change; and an opportunity may occur, at some particular conjuncture, for effecting what was not before possible, which may be lost by the want of a fit agent on the spot to embrace it. But admitting the experiment has now been sufficiently tried to justify its abandonment, still it does not follow that it was unwise to have continued it as long as it was; and as this must at least rest in opinion, the continuance, if upon an erroneous calculation in this particular, is no proof of a "disposition to multiply offices or officers." And those who consider the nature and extent of our commercial relations with Portugal, will not cease to think it problematical, whether the expense of a diplomatic agent, especially in a situation in which nothing has been defined by treaty, ought to stand in competition with the benefits which may result from the presence of a minister at the court of that kingdom. This consideration alone is sufficient to repel the charge.

LUCIUS CRASSUS.

NO. X

January 25, 1802.

As to Holland—being the second power which acknowledged our independence, and made a treaty with us, a step which involved her in war with Great Britain, it was deemed proper to treat her with a marked respect. Besides this, from the time of our revolution to the present, we have had large money concerns with her people. A trusty and skilful public agent was for a long time necessary to superintend those concerns; and by the annexation of a diplomatic character, a double purpose was answered. The honorable nature of the station enabled the government to find a competent agent at a less expense than would have been requisite to procure one merely for the money object. It is not meant to deny that the great change which has lately happened in the affairs of that country, making it in effect a dependency on France, rendered a removal of the minister proper; but it does not follow that it ought to have been done sooner. It is also known that Mr. Murray, the late envoy, has been for a considerable time past employed in our negotiations with France, which probably was a collateral reason for not recalling him sooner. In respect to one, if not to both these agents, it may be observed that a time of war was not the most eligible moment for the removal of a minister.

As to Berlin, the inducements for keeping a minister there, have never been fully explained. It is only known that our commercial treaty with Prussia had expired, and that a renewal has been effected by

the envoy sent thither; but influential as was the Court of Prussia in the affairs of Europe, during the late dreadful storm, it may have been conceived that a cultivation of the good-will of the Prussian monarch was not a matter of indifference to the peace and security of this country. If this was the object of the mission, though there may have been too far-fetched a policy in the case, it offers a defence of the measure, which exculpates the executive, at least from the charge of a desire to multiply officers improvidently.

On the most unfavorable supposition, then, here was one diplomatic agent too many, and two others were continued longer than was absolutely necessary. This surely is not of magnitude sufficient to constitute a serious charge, where malevolence does not inspire a spirit of accusation. In considering this question, it ought to be remembered that it is the prevailing policy of governments to keep diplomatic agents at all courts where they have important relations.

As to the navy agents, it is sufficient to say that they were temporary persons who grew up out of our rupture with France; who, when they were appointed were useful to accelerate naval preparations at as many points as could be advantageously occupied, and that it was only proper to discontinue them when an accommodation had been effected, and after they had had time enough to wind up the affairs of their agency. This was not the case previous to Mr. Jefferson's administration. Accordingly, in some early instances of removal, it was only

done to substitute members of his own *sect.* And though several of the navy agents were afterwards discontinued, spleen itself cannot imagine any color of blame, either as to the appointment or continuance of them.

As to the inspectors of the revenue, the case in brief stands thus: When the excise on distilled spirits was established, three different descriptions of officers were instituted to carry it into effect—supervisors, inspectors, and collectors, distributed to districts, surveys, and divisions, one to each. A district comprehending an entire State; a survey, some large portions of it or a number of counties; a division, for the most part a single county. In some of the small States there were no distinct officers for the surveys—the duties of inspectors being annexed to those of supervisor; in larger ones there were inspectors; more or less numerous, according to their extent. As other internal revenues were established, they were put under the management of the same officers. The bare statement of the fact shows the necessity of these officers. The revenues of no government were perhaps ever collected under a more simple organization, or through a smaller number of channels. It is not alleged that the first and last classes of officers were unnecessary. It is only to the middle class that any specious objection can be made. Let us conjecture the reasons for employing them.

In some of the States great opposition was expected, and was actually experienced. In such States especially, it was evidently useful to have the

exertions of some men of weight and character in spheres of moderate extent, to reconcile the discontented; to arrange the details of business, and to give energy to the measures for collection. In others similar officers were probably useful in the early stages, for the purpose of establishing the details simply. The subdivision was in all cases favorable to an active and vigilant superintendence. Nor does it require extraordinary penetration to discern that the policy was wise at the time when the measure was adopted. It is possible that upon the complete establishment of the plan, when all opposition had been vanquished, and when the collection had become an affair of mere routine, that this intermediate class may have ceased to be essential. But till this had become perfectly evident, it would have been premature to alter the original plan. Though it be true that some years have elapsed since the excise law was passed, it is not very long since it has been in full and uninturrupted operation. Other laws introducing other branches of internal revenue have been subsequently passed from time to time, and the agency of the same officers has probably been found useful on their first introduction and execution. Hence it is easily accounted for, that the inspectors were not before discontinued, if indeed experience has shown that they are not still necessary, which is itself problematical. Nothing is more easy than to reduce the number of agents employed in any business, and yet for the business to go on with the reduced number. But before the reduction is applauded, it ought to be ascertained that the

business is as well done as it was before. There is a wide difference between merely getting along with business and doing it well and effectually.

These observations sufficiently show, that in the instances which have been cited there is no evidence of a disposition, in the preceding administrations, improperly to multiply offices and officers. Acting under different circumstances, they conducted as those circumstances dictated, and in all probability in a manner the best adapted to the advancement of the public service. A change of circumstances may, in some instances, have rendered a continuance of some of the agents thus employed unnecessary; and the present Chief Magistrate may even be right in discontinuing them; but it is not therefore right to attempt to derive from this any plea of peculiar merit with the people; and it is very far from right to make it a topic of slander on predecessors. Perhaps, however, this is too rigorous a construction, and that nothing more was intended than to set off to the best advantage the petty services of petty talents.

If this was the true aim, it is to be regretted that it was not so managed as to avoid the appearance of a design to depreciate in the public estimation those who went before. Had this delicacy been observed, the attempt would have attracted neither notice nor comment. At most it would have been said,

> "Commas and points he sets exactly right,
> And 't were a sin to rob him of his mite."

LUCIUS CRASSUS.

NO. XI

February 3, 1802.

The message observes, "that in our care of the public contributions intrusted to our direction, it would be prudent to multiply barriers against the dissipation of public money by appropriating specific sums to every specific purpose, *susceptible of definition;* by disallowing all applications of money varying from the appropriation in object or transcending it in amount, by reducing the undefined field of contingencies, and thereby circumscribing discretionary powers over money, and by *bringing back* to a single department all accountabilities for money where the examination may be prompt, efficacious, and uniform." In this recommendation, we can be at no loss to discover additional proof of a deliberate design in the present Chief Magistrate to arraign the former administrations. All these suggestions imply, on their part, either a neglect of, or a defective attention to, the objects recommended. Some of them go further, and insinuate that there had been a departure from correct plans which had before been adopted. The censure intended to be conveyed is as unjust as the conceptions which have dictated it are crude and chimerical. In all matters of this nature, the question turns upon the proper boundaries of the precautions to be observed; how far they ought to go; where they should stop; how much is necessary for security and order; what qualifications of general rules are to be admitted to adapt them to practice and to attain the ends of the public service. It is certainly possible to do too much as

well as too little; to embarrass, if not defeat the end intended, by attempting more than is practicable; or to overbalance the good by evils accruing from an excess of regulation. Men of business know this to be the case in the ordinary affairs of life. How much more must it be so in the extensive and complicated concerns of an empire? To reach and not to pass the salutary medium is the province of sound judgment. To miss the point will ever be the lot of those, who, enveloped all their lives in the midst of theory, are constantly seeking for an ideal perfection, which never was and never will be attainable in reality. It is about this medium—not about general principles—that those in power in our government have differed; and to experience, not to the malevolent insinuations of rivals, must be the appeal, whether the one or the other description of persons has judged most accurately. Yet, discerning men may form no imperfect opinion of the merits of the controversy between them by even a cursory view of the distinctions on which it has turned.

Nothing, for instance, is more just or proper than the position that the Legislature ought to appropriate specific sums, for specific purposes; but nothing is more wild or of more inconvenient tendency, than to attempt to appropriate "a specific sum for each specific purpose, *susceptible of definition*," as the message preposterously recommends. Thus (to take a familiar example) in providing for the transportation of an army, *oats* and *hay* for the subsistence of horses, are each susceptible of a definition, and an estimate, and a precise sum may be appropriated

for each separately; yet in the operations of an army, it will often happen that more than a sufficient quantity of the one article may be obtained, and not a sufficient quantity of the other. If the appropriations be distinct, and the officer who is to make the provision be not at liberty to divert the fund from one of these objects to the other (as the doctrine of the message implies), the horses of the army may in such a case starve and its movements be arrested—in some situations, even the army itself may likewise be starved, by a failure of the means of transportation.

If it be said that the inconvenience here suggested may be avoided, by making the appropriations for *forage* generally, and not for the items which compose it separately—the answer is, first, that this, by uniting and blending different things, susceptible each of a precise definition, is an abandonment of the principle of the message; secondly, that it would only be a partial cure for the mischiefs incident to that rigorous principle. It might happen that the badness of roads would injure the wagons of the army more than was anticipated, and so much more, as to exhaust the specific fund appropriated for their repairs; it might also have happened, from various causes, that at an earlier period of the campaign, the consumption of forage had been less than was calculated, so that there would be a surplus of the fund destined for this object; if, in such a case, the public agent could not transfer that surplus to the repairs of the wagons, the motions of the army might, in this way, be suspended, and in the event, famine and ruin produced.

This analysis might be pursued, so as to prove that similar evils are inseparable from a much more qualified application of the principle in the message, and to demonstrate that nothing more can safely or reasonably be attempted, than to distribute the public expenses, into a certain number of convenient subdivisions or departments; to require from the proper officers, estimates of the items, which are to compose each head of expense; and after examining these with due care, to adapt the appropriations to the respective aggregates,—applying a specific sum to the amount of each great subdivision: the pay of the army; military stores; quartermaster stores, etc., etc. This, with even more detail than could be well executed, has been uniformly done under the past administrations of the present government from the very beginning of its proceedings. More will, in the experiment, be found impracticable and injurious; especially in seasons and situations when the public service demands activity and exertion.

In like manner, the former practice of the government has corresponded with the rule, taken in its true and just sense, of "disallowing all applications of money, varying from the appropriation in object, or transcending it in amount." It is confidently believed, that whoever shall allege or insinuate to the contrary, may be challenged to point out the instance in which money has been issued from the Treasury for any purpose which was not sanctioned by a regular appropriation, or which exceeded the appropriated amount; or where there was an expenditure of money allowed, that was not strictly

within the limits of such an appropriation; except, indeed, upon the impracticable idea of minutely separating, and distinguishing the items, which form the aggregate of some general head of expenditure.

It is likewise material to have it well understood that, generally speaking, the distinction between the appropriations for different objects can only be strictly observed at the Treasury itself, which can easily take care that more money shall not go out for any purpose than is authorized by law; and can see that this money is fairly expended by the proper officer in conformity with the general spirit of the appropriation prescribed by the law. But it is in most cases impossible for the officer, charged with a particular branch of the public service, to separate nicely in the details of expenditure, the different funds which may have been placed in his hands. Thus (still drawing our examples from the military department, where the danger of misapplication is always the greatest) if several sums be placed in the hands of the Quartermaster-General, for different objects, he must, of necessity, distribute a large proportion of them among his principal deputies, and these again among subordinate agents. Unless this distribution be pursued through the remotest ramifications, down to the moment of final expenditure, it is evident that it must fail throughout; and it is no less evident that it cannot be so far pursued. But to this, the accountantship only would be an insuperable obstacle; it would require in every, the most inferior, agent, a profound knowledge of accounts, and would impose, both on principals and

subordinates, the duty of keeping such a multiplicity of them, as, if even practicable, would exhaust the fund issued for the public service, in mere clerkship. Another most mischievous consequence would ensue. The exigencies of the public service are often so variable, that a public agent would frequently find himself full-handed for one purpose, empty-handed for another; and if forbidden to make a transfer, not only the service would suffer, but an opportunity, with very strong temptation, would be given, to traffic with the public money for private gain; while the business of the government would be stagnated by the injudicious and absurd impediments of an over-driven caution. Happily, it is not very material that the principle of distinct appropriations for separate objects, should be carried through all the details. The essential ends of it are answered, if it be strictly pursued, in the issuing of money from the Treasury, and if this department be careful that the principal lines of discrimination are not transgressed.

The theory of the message plainly contemplates that in no case shall the *actual money* appertaining to one fund be expended for the purpose of another, though each fund may be sufficient for its object, and though there may be an appropriation for each object. This is another excess of theory, which, with a *full treasury*, would often disable the government from fulfilling its engagements, and from carrying on the public business. To execute this plan consistently with the exigencies of national expenditure would probably require, in ordinary, a triplication of the revenues, or a capital necessary for the

whole amount of that expenditure, and would very often lock up from circulation large sums which might be of great importance to the activity of trade and industry. Such are the endless blessings to be expected from the notable schemes of a philosophic *projector!* Strict to a fault where relaxation is necessary; lax to a vice where strictness is essential!

As to "reducing the undefined field of contingencies, and circumscribing discretionary powers over money," observations similar to those which have been already made occur. The term *reducing* implies that the thing must exist in a degree; and indeed it is manifest that all the minute casualties of expenditure, especially in the naval and military departments, cannot be foreseen and defined. The question then must be, Have not the limits been sufficiently narrow for the situation of the government in the scenes through which it has passed, comprehending for a great part of the time Indian wars and foreign hostilities? Certainly, if veiwed on a proportionable scale, the extent appears to have been as moderate as could have been desired, and no blame can justly attach to the administration on this account.

As to "*bringing back* to a single department all accountabilities for money," there never has been a deviation from that system. The department of the Treasury has uniformly preserved a vigilant superintendence over all accountabilities for public money. A particular accountant, indeed, has been appointed in the War and Navy departments, but he has been subordinate to the Treasury Department, which has

prescribed regulations for his conduct, and has constantly revised his proceedings. It is true that by his connection with the particular department for which he is accountant, there are cases in which he is to be guided by the directions of the head of that department; but though these directions, if not plainly contrary to the rules prescribed by the Treasury, would exempt him from responsibility, the directions themselves pass under the review of the Treasury, as a check upon the head of the department to which he is attached, and in case of abuse they would serve to establish a responsibility of the principal. To say that this interferes with a prompt examination of accounts, is to affirm that a division of labor is injurious to dispatch, a position contrary to all experience. The fact, without doubt, is that it essentially contributes to dispatch, and that whatever new modification may be adopted, either the accounts of other departments will never keep pace with the current of business in times of activity, or that modification must adhere to the principle of employing distinct organs.

If it be the design to exclude in every case, the intervention of the head of the particular departments, some or all of these evils will follow: The service of that department will suffer by unduly restricting its head, in cases in which he must be the most competent judge; and by obliging him, in order to avoid eventual difficulties, to resort, in the first instance, to another department, less alive than himself to the exigencies of his own, for a cautious and slow, perhaps a reluctant acquiescence in arrange-

ments which require promptness. If in the spirit of confidence and accommodation, the officers of the Treasury yield a ready compliance with the wishes of the head of such department, they may inadvertently co-operate in measures which they would have disapproved and corrected on a deliberate and impartial revision. If this spirit be not shown, not only the immediate service of the department may be improperly impeded, but sensations unfriendly to the due harmony of the different members of the administration may be engendered. On one side of the dilemma stands collusion, on the other discord.

The existing plan steers a middle and a prudent course; neither fettering too much the heads of the other departments nor relinquishing too far the requisite control of the Treasury. Its opposite supposes all trust may be placed in one department—none in the others. The extravagant jealousy of the overbearing influence of the Treasury Department, which was so conspicuous in the times of the two former secretaries, has of a sudden given way to unlimited confidence! The intention seems to be to surround the brow of their immaculate successor with the collected rays of legislative and executive favor. But vain will be the attempt to add lustre to the dim luminary of a benighted administration!

LUCIUS CRASSUS.

NO. XII

February 23, 1802.

From the manner in which the subject was treated in the fifth and sixth numbers of the Examination, it

has been doubted whether the writer did or did not entertain a decided opinion as to the power of Congress to abolish the offices and compensations of judges, once instituted and appointed, pursuant to a law of the United States. In a matter of such high constitutional moment, it is a sacred duty to be explicit. The progress of a bill lately brought into the Senate for repealing the law of the last session, entitled, "An act to provide for the more convenient organization of the courts of the United States," with the avowed design of superseding the judges who were appointed under it, has rendered the question far more serious than it was while it rested merely on the obscure suggestion in the Presidential Message. Till the experiment had proved the fact, it was hardly to have been imagined that a majority of either House of Congress, whether from design or error, would have lent its sanction to a glaring violation of our national compact, in that article which, of all others, is the most essential to the efficiency and stability of the government; to the security of property; to the safety and liberty of person. This portentous and frightful phenomenon has, nevertheless, appeared. It frowns with malignant and deadly aspect upon our Constitution. Probably before these remarks shall be read, that Constitution will be no more! It will be numbered among the numerous victims of Democratic frenzy; and will have given another and an awful lesson to mankind—the prelude perhaps of calamities to this country, at the contemplation of which imagination shudders!

With such a prospect before us, nothing ought to

be left unessayed to open the eyes of thinking men to the destructive projects of those mountebank politicians, who have been too successful in perverting public opinion, and in cheating the people out of their confidence; who are advancing with rapid strides in the work of disorganization—the sure forerunner of tyranny; and who, if they are not arrested in their mad career, will, erelong, precipitate our nation into all the horrors of anarchy.

It would be vanity to expect to throw much additional light upon a subject which has already exhausted the logic and eloquence of some of the ablest men of our country; yet it often happens that the same arguments placed in a new attitude and accompanied with illustrations, which may have escaped the ardor of a first research, serve both to fortify and extend conviction. In the hope that this may be the case, the discussion shall be pursued with as much perspicuity and brevity as can be attained.

The words of the Constitution are, "The judges *both* of the supreme and inferior courts *shall hold their offices during good behavior*, and shall at stated times receive for their services a compensation which *shall not be diminished during their continuance in office*."

Taking the literal import of the terms as a criterion of their true meaning, it is clear that the *tenure* or *duration* of the office is limited by no other condition than the *good behavior* of the incumbent. The words are imperative, simple, and unqualified: "The judges *shall hold their offices during good behavior*."

Independent therefore of any artificial reasoning to vary the natural and obvious sense of the words, the provision must be understood to vest in the judge a right to the office, indefeasible but by his own misconduct.

It is, consequently, the duty of those who deny this right to show, either that there are certain presumptions of intention, deducible from other parts of the constitutional instrument, or certain general principles of constitutional law or policy, which ought to control the literal and substitute a different meaning.

As to presumptions of intention, different from the import of the terms, there is not a syllable in the instrument from which they can be inferred; on the contrary, the latter member of the clause cited affords a very strong presumption the other way.

From the injunction, that the compensation of the judges shall not be diminished, it is manifest that the Constitution intends to guard the independence of those officers against the Legislative Department; because, to this department *alone* would have belonged the power of diminishing their compensations.

When the Constitution is thus careful to tie up the Legislature from taking away *part* of the compensation, is it possible to suppose that it can mean to leave that body at full liberty to take away the *whole?* The affirmative imputes to the Constitution the manifest absurdity of holding to the Legislature this language: "You shall not *weaken* the independence of the judicial character by exercising the power of *lessening* his emolument, but you may *destroy* it

altogether, by exercising the greater power of *annihilating* the recompense with the office." No mortal can be so blind as not to see that, by such a construction, the restraint intended to be laid upon the Legislature by the injunction not to lessen the compensation, becomes absolutely nugatory.

In vain is a justification sought in that part of the article which provides that "the judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the Congress *may* from time to time ordain and establish." The position that a discretionary power to institute inferior courts includes virtually a power to abolish them, if true, is nothing to the purpose. The abolition of a court does not necessarily imply that of its judges. In contemplation of law, the court and the judge are distinct things. The court may have a legal existence, though there may be no judge to exercise its powers. This may be the case either at the original creation of a court, previous to the appointment of a judge, or subsequently, by his death, resignation, or removal. In the last case, it could not be pretended that the court had become extinct by the event. In like manner the office of the judge may subsist, though the court in which he is to officiate may be suspended or destroyed. The duties of a judge, as the office is defined in our jurisprudence, are twofold—judicial and ministerial. The latter may be performed out of court, and often without reference to it. As conservator of the peace, which every judge is, *ex officio*, many things are done, not connected with a judicial controversy, or to speak tech-

nically, with a *lis pendens*. This serves to illustrate the idea that the office is something different from the court; which is the place or situation for its principal action, yet not altogether essential to its activity. Besides, a judge is not the less a judge when out of court than when in court. The law does not suppose him to be always in court, yet it does suppose him to be always in office; in vacation as well as in term. He has also a property or interest in his office, which entitles him to civil actions and recompense in damages for injuries that affect him in relation to his office; but he cannot be said to have a property or interest in the court of which he is a member. All these considerations confirm the hypothesis that the court and the judge are distinct legal entities, and therefore may exist, the one independently of the other.

If it be replied that the office is an incident to the court, and that the abolition of the principal includes that of the incidents, the answer to this is, that the argument may be well founded as to all subsequent appointments, but not as to those previously made. Though there be no office to be filled in future, it will not follow that one already vested in an individual, by a regular appointment and commission, is thereby vacated and divested. Whether this shall or shall not happen must depend on what the Constitution or the law has declared with regard to the *tenure* of the office. Having pronounced that this shall be *during good behavior*, it will preserve the office to give effect to that tenure for the benefit of the possessor. To be consistent with itself it will

require and prescribe such a modification and construction of its own acts as will reconcile its power over the future with the rights which have been conferred as to the past.

Let it not be said that an office is a mere trust for public benefit, and excludes the idea of a property or a vested interest in the individual. The first part of the proposition is true—the last false. Every office combines the two ingredients of an interest in the possessor and a trust for the public. Hence it is that the law allows the officer redress, by a civil action, for an injury in relation to his office which presupposes property or interest. This interest may be defeasible at the pleasure of the government, or it may have a fixed duration, according to the constitution of the office. The idea of a vested interest holden even by a permanent tenure, so far from being incompatible with the principle that the primary and essential end of every office is the public good, may be conducive to that very end, by promoting a diligent, faithful, energetic, and independent execution of the office.

But admitting, as seems to have been admitted by the speakers on both sides of the question, that the judge must fall with the court, then the only consequence will be that Congress cannot abolish a court once established. There is no rule of interpretation better settled than that different provisions in the same instrument, on the same subject, ought to be so construed as, if possible, to comport with each other, and give a reasonable effect to all.

The provision that "the judiciary power shall be

vested in one supreme court, and in such inferior courts as the Congress *may* from time to time ordain and establish," is immediately followed by this other provision, "the judges, *both* of the supreme and inferior courts, shall hold their offices during good behavior."

The proposition that a power to do includes, virtually, a power to undo, as applied to a legislative body, is generally but not universally true. All *vested rights* form an exception to the rule. In strict theory there is no lawful or moral power to divest by a subsequent statute a right vested in an individual by a prior. And accordingly it is familiar to persons conversant with legal studies that the repeal of a law does not always work the revocation or divestiture of such rights.

If it be replied that though a legislature might act immorally and wickedly in abrogating a vested right, yet the legal *validity* of its act for such a purpose could not be disputed, it may be answered that this odious position, in any application of it, is liable to question in every limited constitution (that is, in every constitution, which, in its theory, does not suppose the WHOLE POWER of the nation to be lodged in the legislative body [1]); and that it is certainly false, in its application to a legislature, the authorities of which are defined by a positive written Constitution, as to every thing which is contrary to the actual provisions of that Constitution. To deny this, is to affirm that the *delegated* is paramount to the *constituent* power. It is, in fact, to affirm that

[1] As in the Parliament of Great Britain.

there are *no constitutional limits to the legislative authority.*

The inquiry, then, must be whether the power to abolish inferior courts, if implied in that of creating them, is not abridged by the clause which regulates the tenure of judicial office.

The first thing which occurs in this investigation is, that the power to abolish is, at most, an implied or incidental power, and, as such, will the more readily yield to any express provision with which it may be inconsistent.

The circumstance of giving to Congress a discretionary power to establish inferior courts, instead of establishing them specifically in the Constitution, has, with great reason, been ascribed to the impracticability of ascertaining beforehand the number and variety of courts which the development of our national affairs might indicate to be proper; especially in relation to the progress of new settlements and the creation of new States. This rendered a discretionary power to *institute* courts indispensable, but it did not alike render indispensable a power to abolish those which were once instituted. It was conceivable that with intelligence, caution, and care, a plan might be pursued in the institution of courts which would render abolitions unnecessary. Indeed, it is not presumable, with regard to establishments of such solemnity and importance, making part of the *organization* of a principal department of the government, that a fluctuation of plans was anticipated. It is therefore not essential to suppose that the power to destroy was intended to be in-

cluded in the power to create. Thus the words, "to ordain and establish," may be satisfied by attributing to them only the latter effect. Consequently, when the grant of the power to institute courts is immediately succeeded by the declaration that the judges of those courts shall *hold* their offices during good behavior, if the exercise of the power to abolish the courts cannot be reconciled with the actual holding or enjoyment of the office, according to the prescribed tenure, it will follow that the power to abolish is interdicted. The implied or hypothetical power to destroy the office must give way to the express and positive right of holding it during good behavior. This is agreeable to the soundest rules of construction; the contrary is in subversion of them.

Difference of origin is a justification of the construction, adopted by the advocates of the repeal, attempted to be derived from a distinction between the supreme and inferior courts. The argument, that, as the former is established by the Constitution, it cannot be annulled by a legislative act, though the latter, which must owe their existence to such an act, may by the same authority be extinguished, can afford no greater stability to the office of a judge of the supreme court than to that of a judge of an inferior court. The Constitution does, indeed, establish the supreme court; but it is altogether silent as to the number of judges. This is as fully left to legislative discretion as the institution of inferior courts; and the rule that a power to undo is implied in the power to do, is therefore no less applicable to the reduction of the number of the judges of the

supreme court than to the abolition of the inferior courts. If the former are not protected by the clause which fixes the tenure of office, *they* are no less at the mercy of the Legislature than the latter. And if that clause does protect them, its protection must be equally effectual for the judges of the inferior courts. Its efficacy, in either case, must be founded on the principle that it operates as a restraint upon the legislative discretion; and, if so, there is the like restraint in both cases, because the very same words in the very same sentence define conjunctly the tenure of office of the two classes of judges. No sophistry can elude this conclusion.

It is therefore plain to a demonstration, that the doctrine which affirms the right of Congress to abolish the judges of the inferior courts is absolutely fatal to the independence of the judiciary department. The observation that so gross an abuse of power, as would be implied in the abolition of the judges of the Supreme Court, ought not to be supposed, can afford no consolation against the extreme danger of the doctrine. The terrible examples before us forbid our placing the least confidence in that delusive observation. Experience, sad experience, warns us to dread every extremity—to be prepared for the worst catastrophe that can happen.

LUCIUS CRASSUS.

NO. XIII

February 27, 1802.

The advocates of the power of Congress to abolish the judges endeavor to induce a presumption of in-

tention favorable to their doctrine from this argument. The provision concerning the tenure of office (say they) ought to be viewed as a restraint upon the Executive Department, *because*, to this department belongs the power of removal; in like manner as the provision concerning the diminution of compensation ought to be regarded as a restraint upon the legislative department, *because*, to this department belongs the power of regulating compensations. The different members of the clause ought to be taken distributively, in conformity with the distribution of power to the respective departments.

This is certainly the most specious of the arguments which have been used on that side. It has received several pertinent and forcible answers. But it is believed to be susceptible of one still more direct and satisfactory, which is not recollected to have been yet given.

If, in the theory of the Constitution, there was but one way of *defeating the tenure* of office, and that exclusively appertaining to the executive authority, it would be a natural and correct inference that this authority was solely contemplated in a constitutional provision upon the subject. But the fact is clearly otherwise. There are two modes known to the Constitution in which the tenure of office may be affected—one, the abolition of the office; the other, the removal of the officer. The first is a legislative act, and operates by removing the office from the person; the last is an executive act, and operates by removing the person from the office. Both equally cause the tenure, enjoyment, or *holding* of the office to cease.

This being the case, the inference which has been drawn fails. There is no ground for the presumption that the Constitution, in establishing the tenure of an office, had an exclusive eye to one only of the two modes in which it might be affected. The more rational supposition is, that it intended to reach and exclude both; because this alone can fulfil the purpose which it appears to have in view: and it ought neither to be understood to aim at less than its language imports, nor to employ inadequate means for accomplishing the end which it professes. Or, the better to elucidate the idea, by placing it in another form, it may be said that since in the nature of things the legislative, equally with the executive organ, may by different modes of action affect the tenure of office, when the Constitution undertakes to prescribe what that tenure shall be, it ought to be presumed to intend to guard that which shall have been prescribed against the interference of either department.

In an instrument abounding with examples of restrictions on the legislative discretion, there is no difficulty in supposing that one was intended in every case in which it may be fairly inferred, either from the words used or from the object to be effected.

While the reason which has been stated refers the provision respecting the tenure of judicial officers as well to the executive as to the legislative department, were it necessary to examine to which, if to either of them, it ought to be deemed most appropriate, there could be no difficulty in selecting the latter rather than the former. The *tenure* of an office is one of its

essential *qualities*. A provision, therefore, which is destined to prescribe or define this quality, may be supposed to have a more peculiar reference to that department which is empowered to constitute the office, either as directory to it in the exercise of its power, or as fixing what otherwise would be left to its discretion.

It is constantly to be recollected, that the terms of the provision do not look particularly to either department. They are general, "the judges shall hold their office during good behavior." 'T is not from the terms, therefore, that an exclusive applicability to the executive organ can be inferred. On the contrary, they must be narrowed, to give them only this effect.

It is different as to the provision concerning compensations. Though equally general in the terms, this can have no relation but to the legislative department; *because*, as before observed, that department alone would have had power to diminish the compensations. But this reason for confining that provision to one department, namely, the power of affecting the compensations, so far from dictating a similar appropriation of the other provision, looks a different way, and requires by analogy that the latter should be applied to both the departments, each having a power of affecting the tenure of office in a way peculiar to itself. Nor can it be too often repeated, because it is a consideration of great force, that the design, so conspicuous in the former of these two provisions, to secure the independence of the judges against legislative influence, is a powerful

reason for understanding the latter in a sense calculated to advance the same important end, rather than in one which must entirely frustrate it.

A rule of constitutional law opposed to our construction is attempted to be derived from the maxim, that the power of legislation is always equal, and that a preceding can never bind or control a succeeding Legislature by its acts, which therefore must always be liable to repeal at the discretion of the successor.

The misapplication or too extensive application of general maxims or propositions, true in their genuine sense, is one of the most common and fruitful sources of false reasoning. This is strongly exemplified in the present instance. The maxim relied upon can mean nothing more than that as to all those matters which a preceding Legislature was free to establish and revoke, a succeeding Legislature will be equally free. The latter may do what the former could have done, or it may undo what the former could have undone. But unless it can be maintained, that the power of ordinary legislation is in itself illimitable, incontrollable, incapable of being bound either by its own acts or by the injunctions or prohibitions of a constitution, it will follow, that the body invested with that power may bind itself, and may bind its successor; so that neither itself nor its succsesor can, of right, revoke acts which may have been once done. To say that a Legislature may bind itself, but not its successor, is to affirm that the latter has not merely an equal but a greater power than the former, else it could not do what the former was unable to

do. Equality of power only will not suffice for the argument. On the other hand, to affirm that a Legislature cannot bind itself, is to assert, that there can be no valid pledge of the public faith, that no right can be vested in an individual or collection of individuals, whether of property, or of any other description, which may not be resumed at pleasure.

Without doubt, a Legislature binds itself, by all those acts which engage the public faith; which confer on individuals permanent rights, either gratuitously or for valuable consideration; and in all these instances a succeeding one is not less bound. As to a right which may have been conferred by an express provision of the Constitution defining the condition of the enjoyment, or as to an institution or matter, in its nature permanent, which the Constitution may have confided to an act of the Legislature, its authority terminates with the act that vests the right or makes the establishment. A case of the first sort is exemplified in the office of a judge; of the last, in the creation of a new State, which has been very pertinently mentioned as a decisive instance of power in a Legislature to do a thing which being done is irrevocable.

But whatever may be the latitude we assign to the power of a Legislature over the acts of a predecessor, it is nothing to the purpose, so long as it shall be admitted that the Constitution may bind and control the Legislature. With this admission, the simple inquiry must always be—has or has not the Constitution, in the particular instance, bound the Legislature? And the solution must be sought in

the language, nature, and end of the provision. If these warrant the conclusion, that the Legislature was intended to be bound, it is perfect nonsense to reply, that this cannot be so, because a Legislature cannot bind itself by its own acts, or because the power of one Legislature is equal to that of another. What signifies this proposition, if the Constitution has power to bind the Legislature, and has in fact bound it in a given case? Can a general rule disprove the fact of an exception which it is admitted may exist? If so, the argument is always ready, and equally valid to disprove any limitation of the legislative discretion.

Compelled, as they must be, to desist from the use of the argument in the extensive sense in which it has been employed, if its inventors should content themselves with saying, that at least the principle adduced by them ought to have so much of force as to make the exception to it depend on an express provision, it may be answered, that in the case under consideration there is an express provision. No language can be more precise or peremptory than this: "The judges, *both* of the Supreme and Inferior Courts, shall hold their offices during good behavior." If this be not an express provision, it is impossible to devise one. But the position, that an express provision is necessary to form an exception, is itself unfounded. Wherever it is clear, whether by a circumstance expressed, or by one so implied as to leave no reasonable doubt, that a limitation of the authority of the Legislature was designed by the Constitution, the intention ought to prevail.

A very strong confirmation of the true intent of the provision respecting the tenure of judicial office, results from an argument by analogy. In each of the articles which establishes any branch of the government, the duration of office is a prominent feature. Two years for the House of Representatives, six for the Senate, four for the President and Vice-President, are the respective terms of duration; and for the judges, the term of good behavior is allotted. It is presumable, that each was established in the same spirit, as a point material in the organization of the government and of a nature to be properly fundamental. It will not be pretended that the duration of office prescribed as to any other department, is within the reach of legislative discretion. And why shall that of judicial officers form an exception? Why shall the Constitution be supposed less tenacious of securing to this organ of the sovereign power a fixed duration than to any other? If there be any thing which ought to be supposed to be peculiarly excepted out of the power of the ordinary Legislature, it is emphatically the organization of the several constituent departments of the government; which in our system are the *Legislative*, *Executive*, and *Judicial*. Reasons of the most cogent nature recommend that the stability and independence of the last of these three branches should be guarded with particular circumspection and care.

LUCIUS CRASSUS.

NO. XIV

March 2, 1802.

In the course of the debate in the Senate, much verbal criticism has been indulged: many important inferences have been attempted to be drawn from distinctions between the words *shall* and *may*. This species of discussion will not be imitated, because it is seldom very instructive or satisfactory. These terms, in particular cases, are frequently synonymous, and are imperative or permissive, directing or enabling, according to the relations in which they stand to other words. It is, however, certain, that the arguments even from this source, greatly preponderate against the right of Congress to abolish the judges.

But there has been one argument, rather of a verbal nature, upon which some stress has been laid, which shall be analyzed; principally to furnish a specimen of the wretched expedients to which the supporters of the repeal are driven. It is this: "The tenure of an office is not synonymous with its existence. Though Congress may not annul the tenure of a judicial office while the office itself continues, yet it does not follow that they may not destroy its existence."

The constituent parts of an office are its authorities, duties, and duration. These may be denominated the elements of which it is composed. Together they form its *essence* or *existence*.[1] It is impossible to separate, even in idea, the duration

[1] The remuneration or recompense is not added, because it is most properly an accessory.

from the existence. The office must cease to exist when it ceases to have duration. Hence, let it be observed that the word *tenure* is not used in the Constitution, and that in the debate it has been the substitute for duration. The words: "The judges shall hold their offices during good behavior," are equivalent to these other words: The offices of the judges shall endure or last so long as they behave well.

The conclusions from these principles are that existence is a *whole*, which includes tenure and duration as a part; that it is impossible to annul the existence of an office without destroying its tenure; and, consequently, that a prohibition to destroy the tenure is virtually and substantially a prohibition to abolish the office. How contemptible, then, the sophism that Congress may not destroy the tenure, but may annihilate the office!

It has now been seen that this power of annihilation is not reconcilable with the language of the constitutional instrument, and that no rule of constitutional law, which has been relied upon, will afford it support. Can it be better defended by any principle of constitutional policy?

To establish the affirmative of this question, it has been argued that if the judges hold their offices by a title absolutely independent of the legislative will, the judicial department becomes a colossal and overbearing power, capable of degenerating into a permanent tyranny; at liberty, if audacious and corrupt enough, to render the authority of the Legislature nugatory by expounding away the laws, and to

assume a despotic control over the rights of person and property.

To this argument (which supposes the case of a palpable abuse of power) a plain and conclusive answer is, that the Constitution has provided a complete safeguard in the authority of the *House of Representatives* to impeach, of the *Senate* to condemn. The judges are in this way amenable to public justice for misconduct, and, upon conviction, removable from office. In the hands of the Legislature itself is placed the weapon by which they may be put down and the other branches of the government protected. The pretended danger, therefore, is evidently imaginary—the security perfect.

Reverse the medal. Concede to the Legislature a legal discretion to abolish the judges, where is the defence? where the security for the judicial department? There is absolutely none. This most valuable member of the government, when rightly constituted the surest guardian of person and property, of which stability is a prime characteristic, losing at once its most essential attributes, and doomed to fluctuate with the variable tide of faction, degenerates into a disgusting mirror of all the various malignant and turbulent humors of party spirit.

Let us not be deceived. The real danger is on the side of that foul and fatal doctrine, which emboldens its votaries, with daring front and unhallowed step, to enter the holy temple of justice and pluck from their seats the venerable personages, who, under the solemn sanction of the Constitution, are commis-

sioned to [illegible] there—to guard that sacred compact with jealous vigilance—to dispense the laws with a steady and impartial hand—unmoved by the storms of faction, unawed by its powers, unseduced by its favors—shielding right and innocence from every attack—resisting and repressing violence from every quarter. It is from the triumph of that execrable doctrine that we may have to date the downfall of our government, and, with it, of the whole fabric of republican liberty. Who will have the folly to deny that the definition of despotism is the concentration of all the powers of government in one person or in one body? Who is so blind as not to see that the right of the Legislature to abolish the judges at pleasure, destroys the independence of the judicial department, and swallows it up in the impetuous vortex of legislative influence? Who is so weak as to hope that the Executive, deprived of so powerful an auxiliary, will long survive? What dispassionate man can withstand the conviction that the boundaries between the departments will be thenceforth nominal, and that there will be no longer more than one active and efficient department?

It is a fundamental maxim of free government, that the three great departments of power, *legislative*, *executive*, and *judiciary*, shall be essentially distinct and independent, the one of the other. This principle, very influential in most of our State constitutions, has been particularly attended to in the Constitution of the United States; which, in order to give effect to it, has adopted a precaution peculiar to itself, in the provisions that forbid the Legislature

to vary in any way the compensation of the *President*, or to diminish that of a *judge*.

It is a principle equally sound, that though in a government like that of Great Britain, having an hereditary chief with vast prerogatives, the danger to liberty, by the predominance of one department over the other, is on the side of the executive; yet in popular forms of government, this danger is chiefly to be apprehended from the legislative branch.

The power of legislation is, in its own nature, the most comprehensive and potent of the three great subdivisions of sovereignty. It is the will of the government; it prescribes universally the rule of action, and the sanctions which are to enforce it. It creates and regulates the public force, and it commands the public purse. If deposited in an elective representative of the people, it has, in most cases, the body of the nation for its auxiliary, and generally acts with all the momentum of popular favor. In every such government it is consequently an organ of immense strength. But when there is an hereditary chief magistrate, clothed with dazzling prerogatives and a great patronage, there is a powerful counterpoise, which, in most cases, is sufficient to preserve the equilibrium of the government; in some cases, to incline the scale too much to its own side.

In governments wholly popular or representative, there is no adequate counterpoise. Confidence in the most numerous, or legislative department, and jealousy of the executive chief, form the genius of every such government. That jealousy, operating in the constitution of the executive, causes this organ to be

intrinsically feeble; and withholding in the course of administration accessory means of force and influence, is for the most part vigilant to continue it in a state of impotence. The result is that the legislative body, in this species of government, possesses additional resources of power and weight; while the executive is rendered much too weak for competition; almost too weak for self-defence.

A third principle, not less well founded than the other two, is that the judiciary department is naturally the weakest of the three. The sources of strength to the legislative branches have been briefly delineated. The executive, by means of its several active powers, of the dispensation of honors and emoluments, and of the direction of the public force, is evidently the second in strength. The judiciary, on the other hand, can ordain nothing. It commands neither the purse nor the sword. It has scarcely any patronage. Its functions are not active but deliberative. Its main province is to declare the meaning of the laws; and, in extraordinary cases, it must even look up to the executive aid for the execution of its decisions. Its chief strength is in the veneration which it is able to inspire by the wisdom and rectitude of its judgments.

This character of the judiciary clearly indicates that it is not only the weakest of the three departments of power, but, also, as it regards the security and preservation of civil liberty, by far the safest. In a conflict with the other departments, it will be happy if it can defend itself—to annoy them is beyond its power. In vain would it singly attempt

enterprises against the rights of the citizen. The other departments could quickly arrest its arm and punish its temerity. It can only, then, become an effectual instrument of oppression, when it is combined with one of the more active and powerful organs; and against a combination of this sort, the true and best guard is a complete independence of each and both of them. Its dependence on either will imply and involve a subserviency to the views of the department on which it shall depend. Its independence of both will render it a powerful check upon the others, and a precious shield to the rights of persons and property. Safety, liberty, are therefore inseparably connected with the real and substantial independence of the courts and judges.

It is plainly to be inferred from the instrument itself, that these were governing principles in the formation of our Constitution: that they were in fact so, will hereafter be proved by the contemporary exposition of persons who, having been themselves members of the body that framed it, must be supposed to have understood the views with which it was framed. Those principles suggest the highest motives of constitutional policy against that construction which places the existence of the judges at the mercy of the Legislature. They instruct us, that to prevent a concentration of powers, *the essence of despotism*, it is essential, that the departments among which they shall be distributed, should be effectually independent of each other; and that, it being impossible to reconcile this independence with a right in any one or two of them to annihilate at

discretion the organs of the other, it is contrary to all just reasoning to imply or infer such a right. So far from its being correct, that an *express* interdiction is requisite to deprive the Legislature of the power to abolish the judges, the very reverse is the true position. It would require a more express provision susceptible of no other interpretation, to confer on that branch of the government an authority so dangerous to the others, in opposition to the strong presumptions, which arise from the care taken in the Constitution, in conformity with the fundamental maxims of free governments, to establish and preserve the reciprocal and complete independence of the respective branches, first by a separate organization of the departments, next by a precise definition of the powers of each, lastly by precautions to secure to each a permanent support.

LUCIUS CRASSUS.

NO. XV

March 9, 1802.

It is generally understood that the Essays under the title of the *Federalist*, which were published at New York, while the plan of our present Federal Constitution was under the consideration of the people, were principally written by two persons [1] who had been members of the convention which devised that plan, and whose names are subscribed to the instrument containing it. In these essays [2]

[1] James Madison, now Secretary of State. Alexander Hamilton, formerly Secretary of Treasury. [Note by A. H.]

[2] Particularly, Nos. xlvii. to li. inclusive, and Nos. lxxviii. to lxxxii. inclusive.

the principles advanced in the last number of this examination are particularly stated and strongly relied upon, in defence of the proposed Constitution; from which it is a natural inference that they had influenced the views with which the plan was digested. The full force of this observation will be best perceived by a recurrence to the work itself; but it will appear clearly enough from the following detached passages.

"One of the principal objections inculcated by the more respectable *adversaries* to the Constitution, is its supposed violation of the political maxim, that the *legislative*, *executive*, and *judicial* departments ought to be *separate* and *distinct*. No *political truth* is certainly of *greater intrinsic value*, or is stamped with the authority of more enlightened patrons of liberty, than that on which the objection is founded. The *accumulation* of all power, legislative, executive, and judicial, in the same hands, whether of one, a few, or many; whether hereditary, self-appointed, or elective, may justly be pronounced the *very definition of tyranny*.[1] Neither of the three departments ought to possess *directly* or *indirectly* an *overruling influence* over the others in the administration of their respective powers." "But the most difficult task is to provide some *practical security* for each, *against the invasion* of the others. Experience assures us that the efficacy of *parchment barriers* has been greatly overrated, and that some *more adequate defence is indispensably necessary* for the more feeble against the more powerful members of the govern-

[1] No. xlvii.

ment. The legislative department is everywhere extending the sphere of its activity, and drawing all power into its impetuous vortex." "In a representative republic, where the executive magistracy is carefully limited, both in the extent and the duration of its power, and where the legislative power is exercised by an assembly, which is inspired by a supposed influence over the people with an intrepid confidence in its own strength; which is sufficiently numerous to feel all the passions which actuate a multitude, yet not so numerous as to be incapable of pursuing the objects of its passions by means which reason prescribes; *it is against the enterprising ambition of this department, that the people ought to indulge all their jealousy and exhaust all their precaution.*" Again: "The *tendency* of republican governments is to an *aggrandizement of the legislative at the expense of the other departments.*"

These passages recognize, as a fundamental maxim of free government, that the three departments of power ought to be separate and distinct; consequently that neither of them ought to be able to exercise, either directly or indirectly, an *overruling influence* over any other. They also recognize as a truth, indicated by the nature of the system and verified by experience, that in a representative republic, the legislative department is the "AARON'S ROD" most likely to swallow up the rest, and therefore to be guarded against with particular care and caution: and they inculcate that parchment barriers (or the formal provisions of a Constitution designating the respective boundaries of authority) having

been found ineffectual for protecting the more feeble against the more powerful members of the government, some more adequate defence, some practical security, is necessary. What this was intended to be, will appear from subsequent passages.

"To what expedient shall we finally resort for maintaining in practice the necessary partition of power among the several departments as laid down in the Constitution?" "As all exterior provisions are found to be inadequate, the defect must be supplied by so contriving the interior structure of the government, as that its several constituent departments may, by their mutual relations, be the means of keeping each other in their proper places." [1]

These passages intimate the "*practical security*" which ought to be adopted for the preservation of the weaker against the stronger members of the government. It is so to be contrived in its interior structure that the constituent organs may be able to *keep each other* in their *proper places;* an idea essentially incompatible with that of making the *existence* of one dependent on the *will* of another. It will be seen afterwards how this structure is to be so contrived.

"In order to lay a *foundation* for that separate and distinct exercise of the different powers of government, which, to a certain extent, is admitted on all hands to be essential to the preservation of liberty, it is evident that each department should have a will of its own; and consequently should be so constituted, that the members of each should have *as*

[1] No. li.

little agency as possible in the appointment of the members of the others. This principle, rigorously adhered to, would require that all the appointments for the several departments should be drawn from the same fountain of authority, the people." But in the constitution of the judiciary department, it might be inexpedient to insist rigorously on the principle: first, because peculiar qualifications being essential in the members, the primary consideration ought to be to select that mode of choice which best secures these qualifications; secondly, because *the permanent tenure* by which the appointments are held in that department, must soon destroy all sense of dependence on the authority conferring them.

"It is equally evident that the members of each department should be as little dependent as possible on those of the others for the emoluments annexed to their offices. Were the Executive Magistrate or the *judges* not independent of the *Legislature* in this particular, *their independence in every other* would be merely nominal." "The great security against a concentration of the several powers in the same department consists in giving to those who administer each department the *necessary constitutional means and personal motives* to resist encroachments of the others." "But it is not possible to give to each department an equal power of self-defence. In republican governments the legislative authority necessarily predominates."

The means held out as proper to be employed for enabling the several departments to keep each other in their proper places are: 1. To give to each such

an *organization* as will render them essentially independent of one another. 2. To secure to each a *support* which shall not be at the discretionary disposal of any other. 3. To establish between them such *mutual relations of authority* as will make one a check upon another, and enable them reciprocally to resist encroachments, and confine one another within their proper spheres.

To accomplish the first end, it is deemed material that they should have as little agency as possible in the appointment of one another, and should all emanate directly from the same fountain of authority—the people. And that it being expedient to relax the principle, in respect to the judiciary department, with a view to a more select choice of its organs, this defect in the creation ought to be remedied by a *permanent tenure* of office; which certainly becomes nominal and nugatory if the existence of the office rests on the pleasure of the Legislature. The principle that the several organs should have as little agency as possible in the appointment of each other, is directly opposed to the claim in favor of one of a discretionary agency to destroy another. The second of the proposed ends is designed to be effected by the provisions for fixing the compensations of the executive and judicial departments. The third, by the qualified negative of the executive on the acts of the two houses of Congress; by the right of one of these houses to accuse, of the other to try and punish, the executive and judicial officers; and lastly, by the right of the judges, as interpreters of the laws, to pronounce unconstitutional acts void.

These are the means contemplated by the Constitution for maintaining the limits assigned to itself, and for enabling the respective organs of the government to keep each other in their proper places, so that they may not have it in their power to domineer the one over the other, and thereby in effect, though not in form, to concentrate the powers in one department, overturn the government, and establish a tyranny. Unfortunate, if these powerful precautions shall prove insufficient to accomplish the end and stem the torrent of the impostor INNOVATION, disguised in the specious garb of *patriotism!*

The views which prevailed in the formation of the Constitution are further illustrated by these additional comments from the same source.[1]

"As liberty can have nothing to fear from the judiciary alone, but would have every thing to fear from its union with either of the other departments; as all the effects of such a union must ensue from a dependence of the former on the latter, notwithstanding a nominal and apparent separation; as from the natural feebleness of the judiciary it is in continual jeopardy of being overpowered, awed, or influenced by its co-ordinate branches; and as nothing can contribute so much to its firmness and independence as *permanency in office*, this quality may therefore be justly regarded as an indispensable ingredient in its constitution; and, in a great measure, as the citadel of the public justice and the public security."

"The complete independence of the courts of justice is peculiarly essential in a limited constitution.

[1] No. lxxviii.

Limitations can be preserved in practice no other way than through the medium of the courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void."

Then follows a particular discussion of the position, that it is the right and the duty of the courts to exercise such an authority: to repeat which, would swell this number to an improper size.

The essence of the argument is, that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void; consequently that no Legislative act, inconsistent with the Constitution, can be valid. That it is not a natural presumption that the Constitution intended to make the legislative body the final and exclusive judges of their own powers; but more rational to suppose that the courts were designed to be an intermediate body between the people and the Legislature, in order, among other things, to keep the latter within the bounds assigned to its authority: that the interpretation of the laws being the peculiar province of the courts, and a *Constitution* being in fact a *fundamental law*, superior in obligation to a *statute*, if the Constitution and the statute are at variance, the former ought to prevail against the latter; the will of the people against the will of the agents; and the judges ought in their quality of interpreters of the laws, to pronounce and adjudge the truth, namely, that the unauthorized statute is a nullity.

"Nor (continues the commentor) does this conclusion by any means suppose a *superiority* of the ju-

dicial to the legislative power. It only supposes that the power of the *people* is superior to both; and that where the will of the *Legislature* declared in its *statute*, stands in opposition to that of the *people* declared in the *Constitution*, the judges ought to be governed by the latter, rather than the former. They ought to regulate their decisions by the *fundamental laws*, rather than by those which are *not fundamental.*"

"If, then, the courts of justice are to be considered as the *bulwarks* of a limited *Constitution* against *legislative encroachments*, this consideration will afford a strong argument for the permanent tenure of judicial offices."

But no proposition can be more manifest than that this permanency of tenure must be nominal, if made defeasible at the pleasure of the Legislature; and that it is ridiculous to consider it as an obstacle to encroachments of the legislative department, if this department has a discretion to vacate or abolish it directly or indirectly.

In recurring to the comments which have been cited, it is not meant to consider them as evidence of any thing but of the views with which the Constitution was framed. After all, the instrument must speak for itself. Yet, to candid minds, the contemporary explanation of it, by men who had had a perfect opportunity of knowing the views of its framers, must operate as a weighty collateral reason for believing the construction agreeing with this explanation to be right, rather than the opposite one. It is too cardinal a point, to admit readily

the supposition that there was misapprehension; and whatever motives may have subsequently occurred to bias the impressions of the one or the other of the persons alluded to, the situation in which they wrote exempts both from the suspicion of an intention to misrepresent in this particular. Indeed a course of argument more accommodating to the objections of the adversaries of the Constitution would probably have been preferred as most politic, if the truth, as conceived at the time, would have permitted a modification. Much trouble would have been avoided by saying: "The Legislature will have a complete control over the judges, by the discretionary power of reducing the number of those of the supreme court, and of abolishing the existing judges of the inferior courts, by the abolition of the courts themselves." But this pretension is a novelty reserved for the crooked ingenuity of after discoveries.

LUCIUS CRASSUS.

NO. XVI

March 19, 1802.

The President, as a politician, is in one sense particularly unfortunate. He furnishes frequent opportunities of arraying him against himself—of combating his opinions at one period by his opinions at another. Without doubt, a wise and good man may, on proper grounds, relinquish an opinion which he has once entertained, and the change may even serve as a proof of candor and integrity. But with such a man, changes of this sort, especially in matters of high public importance, must be rare. The

contrary is always a mark, either of a weak and versatile mind, or of an artificial and designing character; which, accommodating its creed to circumstances, takes up or lays down an article of faith, just as may suit a present convenience.

The question in agitation, respecting the judiciary department, calls up another instance of opposition between the former ideas of Mr. Jefferson and his recent conduct. The leading positions which have been advanced as explanatory of the policy of the Constitution in the structure of the different departments and as proper to direct the interpretation of the provisions, which were contrived to secure the independence and firmness of the judges, are to be seen in a very emphatical and distinct form, in the *Notes on Virginia*. The passage in which they appear deserves to be cited at length, as well for its intrinsic merit, as by way of comment upon the true character of its author; presenting an interesting contrast between the maxims, which experience had taught him while Governor of Virginia, and those which now guide him as the official head of a great party in the United States. It is in these words:—

"All the powers of government, legislative, executive, and judiciary, result to the legislative body. The *concentrating* these in the same hands is precisely the definition of *despotic government*. It will be no alleviation that these powers will be exercised by a plurality of hands, and not by a single one. *One hundred and seventy-three despots would surely be as oppressive as one*. Let those who doubt it turn their eyes on the republic of Venice. As little will

it avail us that they are chosen by ourselves. An *elective despotism* was not the government we fought for; but one which should not only be founded on free principles, but in which the powers of government should be so divided and balanced among several bodies of magistracy, as that no one could transcend their legal limits without being effectually *checked* and *restrained* by the others. For this reason, that convention which passed the ordinance of government, laid its foundation on this basis, that the legislative, executive, and judiciary departments should be separate and distinct, so that no person should exercise the powers of more than one of them at the same time. *But no barrier was provided between these several powers.* The *judiciary* and executive members were left *dependent on the legislative* for their subsistence in office, and some of them for their continuance in it. If, therefore, the Legislature assumes executive and judiciary powers, no opposition is likely to be made,—nor if made, can be effectual; because, in that case, they may put their proceedings into the form of an act of assembly, which will render them obligatory on the other branches. They have accordingly *in many instances decided rights* which should have been left to *judiciary controversy;* and *the direction of the Executive, during the whole time of their session, is becoming habitual and familiar.*"

This passage fully recognizes these several important truths: that the tendency of our governments is towards a CONCENTRATION of the POWERS of the different departments in the LEGISLATIVE

BODY; that such a CONCENTRATION is precisely the DEFINITION of DESPOTISM, and that an effectual *barrier* between the respective departments ought to exist. It also, by a strong implication, admits that officers during *good behavior* are independent of their Legislature for their continuance in office. This implication seems to be contained in the following sentence: "The judiciary and executive members were left dependent on the Legislature for their subsistence in office, and *some* of them *for their continuance in it.*" The word "*some*" implies that *others* were not left thus dependent; and to what description of officers can the exception be better applied than to the judges, the tenure of whose offices was *during good behavior?*

The sentiments of the President, delivered at a *period* when he can be supposed to have been under no improper bias, must be regarded by all those who respect his judgment, as no light evidence of the truth of the doctrine for which we contend. Let us, however, resume and pursue the subject on its merits, without relying upon the aid of so variable and fallible an authority.

At an early part of the discussion in this examination, a construction of the Constitution was suggested, to which it may not be amiss to return. It amounts to this, that Congress have power to new-model, or even to abrogate, an inferior court, but not to abolish the office or emoluments of a judge of such court previously appointed. In the Congressional debates, some of the speakers against the repealing law appear to have taken it for granted, that the

abrogation of the court must draw with it the abolition of the judges, and therefore have denied in totality the power of abrogation. In the course of these papers, too, it has been admitted, that if the preservation of the judges cannot be reconciled with the power to annul the court, then the existence of this power is rightly denied. But in an affair of such vast magnitude, it is all important to survey with the utmost caution the ground to be taken, and then to take and maintain it with inflexible fortitude and preseverance. Truth will be most likely to prevail, when the arguments which support it stop at a temperate mean, consistent with practical convenience. Excess is always error. There is hardly any theoretic hypothesis which, carried to a certain extreme, does not become practically false. In construing a Constitution, it is wise, as far as possible, to pursue a course, which will reconcile essential principles with convenient modifications. If guided by this spirit, in the great question which seems destined to decide the fate of our government, it is believed that the result will accord with the construction, that *Congress have a right to change or abolish inferior courts, but not to abolish the actual judges.*

Towards the support of this construction, it has been shown in another place, that the courts and the judges are distinct legal *entities*, which, in contemplation of law, may exist, independently the one of the other—mutually related, but not inseparable. The act proposed to be repealed exemplifies this idea in practice. It abolishes the District Courts of Tennessee and Kentucky, and transfers their judges

to one of the Circuit Courts. Though the authorities and jurisdiction of those courts are vested in the Circuit Court, to which the judges are transferred; yet the *identity of the courts* ceases. It cannot be maintained that courts, so different in their organization and jurisdiction, are the same; nor could a legislative transfer of the judges have been constitutional, but upon the hypothesis, that the office of a judge may survive the court of which he is a member. A *new appointment* by the Executive, of two additional judges, for the Circuit Court, *would otherwise have been necessary.*

This precedent in all its points is correct, and exhibits a rational operation of the construction which regards the office of the judge as distinct from the court; as one of the elements, or constituent parts, of which it is composed; not as a mere incident that must perish with its principal.

It will not be disputed, that the Constitution *might* have provided *in terms*, and with effect, that an inferior court which had been *established by law* might by law be abolished, so, nevertheless, that the judges of such court should retain the offices of judges of the United States with the emoluments before attached to their offices. The operation of such a provision would be, that when the court was abolished, all the functions to be executed in that court would be suspended, and the judge could only continue to exert the authorities and perform the duties, which might before have been performed, without reference to causes *pending in court;* but he would have the capacity to be annexed to another

court, without the intervention of a new appointment, and by that annexation, simply to *renew* the exercise of the authorities and duties which had been *suspended*.

If this might have been the effect of positive and explicit provision, why may it not likewise be the *result* of provisions which, presenting opposite considerations, point to the same conclusion: as a compromise calculated to reconcile those considerations with each other and to unite different objects of public utility? Surely the affirmative infringes no principle of legal construction; transgresses no rule of good sense.

Let us then inquire, whether there are not in this case opposite and conflicting considerations, *demanding* a compromise of this nature? On the one hand, it is evident, that if an inferior court once instituted, though found inconvenient, cannot be abolished, this is to entail upon the community the mischief, be it more or less, of a first error in the administration of the government; on the other hand, it is no less evident, that if the judges hold their offices at the discretion of the Legislature, they cease to be co-ordinate, and become a dependent branch of the government; from which *dependence*, mischiefs infinitely greater are to be expected.

All these mischiefs, the lesser as well as the greater, are avoided by saying: "*Congress may abolish the courts, but the judges shall retain their offices with the appertinent emoluments.*" The only remaining inconvenience then will be one too insignificant to weigh in a national scale, that is, the expense of the

compensations of the incumbents during their lives. The future and permanent expense will be done away.

But will this construction secure the benefits intended by the Constitution to be derived from the INDEPENDENT TENURE OF JUDICIAL OFFICE? Substantially it will. The main object is to preserve the judges from being influenced by an apprehension of the loss of the advantages of office. As this loss could not be incurred, that influence would not exist. Their firmness could not be assailed by the danger of being superseded, and perhaps *consigned to want.* Let it be added, that when it was once understood not to be in the power of the Legislature to deprive the judges of their offices and emoluments, it would be a great restraint upon the *factious motives* which might induce the *abolition of a court.* This would be much less likely to happen unless for genuine reasons of public utility; and of course there would be a much better prospect of the stability of judiciary establishments.

LUCIUS CRASSUS.

NO. XVII

March 20, 1802.

It was intended to have concluded the argument respecting the judiciary department with the last number. But a speech [1] lately delivered in the House of Representatives having since appeared, which brings forward one new position, and reiterates some others in a form well calculated to excite

[1] By Mr. Giles.

prejudice, it may not be useless to devote some further attention to the subject.

The new position is, that the clause of the Constitution enabling the judges to hold their offices during good behavior, ought to be understood to have reference to the Executive only, BECAUSE ALL OFFICES ARE HOLDEN OF THE PRESIDENT!!

This is the second example of a doctrine contrary to every republican idea, broached in the course of this debate by the advocates of the repealing law.[1] Had a Federalist uttered the sentiment, the cry of monarchy would have resounded from one extremity of the United States to the other. It would have been loudly proclaimed that the mask was thrown aside, by a glaring attempt to transform the servants of the people into the supple tools of Presidential ambition. But now, to justify a plain violation of the Constitution, and serve a party purpose, this bold and dangerous position is avowed without hesitation or scruple, from a quarter remarkable, chiefly, for the noisy promulgation of popular tenets.

The position is not correct; and it is of a nature to demand the indignant reprobation of every real republican. In the theory of all the American Constitutions, offices are holden of the government, in other words, of the PEOPLE *through* the GOVERNMENT. The appointment is indeed confided to a particular organ, and in instances in which it is not otherwise provided by the Constitution or the laws,

[1] The other is the denial of the right of the courts to keep the Legislature within its constitutional bounds by pronouncing laws which transgress them inoperative.

the removal of the officer is left to the pleasure or discretion of that organ. But both these acts suppose merely an instrumentality of the organ, from the necessity or expediency of the people's acting in such case by an agent. They do not suppose the substitution of the agent to the people, as the object of the fealty or allegiance of the officer.

It is said that the word *holden* is a technical term denoting tenure, and implying that there is one who holds; another of whom the thing is holden. This assertion is, indeed, agreeable to the common use of the word in our law books. But it is hardly to be presumed that it was employed in the Constitution in so artificial a sense. It is more likely that it was designed to be the equivalent of the words *possess, enjoy*. Yet, let the assertion be supposed correct. In this case it must also be remembered that the term in this *technical* sense includes two things—the quantity of interest in the subject holden and the meritorious consideration upon which the grant is made; which in many cases includes service or rent, in all fealty; this last forming emphatically the link or tie between the lord and the tenant, the sovereign and the officer. Will any one dare to say that fealty or allegiance, as applied to the government of the United States, is due from the officer to the President? Certainly it is not. It is due to the people in their political capacity. If so, it will follow that the office is holden not of the President, but of the *Nation*, State, or Government.

It is remarkable that the Constitution has everywhere used the language, "Officers of the United

States," as if to denote the relation between the officer and the sovereignty; as if to exclude the dangerous pretension that he is the mere creature of the Executive; accordingly, he is to take an oath to support the "Constitution"; that is, an oath of fidelity to the government; but no oath of any kind to the *President*.

In the theory of the British Government it is entirely different; there the majesty of the nation is understood to reside in the prince. He is deemed the real sovereign. He is, emphatically, the fountain of honor. Allegiance is due to him; and, consequently, public offices are, in the true notion of *tenure*, holden of him. But in our Constitution the President is not the sovereign; the sovereignty is vested in the government, collectively; and it is of the sovereignty, strictly and technically speaking, that a public officer holds his office.

If this view of the matter be just, the basis of the argument, in point of fact, fails; and the principle of it suggests an opposite conclusion, namely, that the condition of *good behavior* is obligatory on the whole government, and ought to operate as a barrier against any authority by which the displacement of the judges may be directly or indirectly effected.

In the same speech much stress has been laid on the words, "during *their* continuance *in* office," as implying that the compensation of the judge was liable to cease by a legislative discontinuance of the office. If the words had been, during *the continuance of the office*, the argument would have been pertinent—but as they stand, a different inference, if

any, is to be drawn from them. They seem rather to relate to the continuance of the *officer* than to that of the *office*. But, in truth, an inference either way is a pitiful subtilty. The clause is neutral; its plain and simple meaning being that the compensation shall not be diminished while the judge retains the office. It throws no light whatever on the question *how he may lawfully cease to possess it.*

Another point is pressed with great earnestness and with greater plausibility. It is this: that the Constitution must have intended to attach recompense to service, and cannot be supposed to have meant to bestow compensation where, in the opinion of the Legislature, no service was necessary. Without doubt, the Constitution does contemplate service as the ground of compensation; but it likewise takes it for granted that the Legislature will be circumspect in the institution of offices; and especially that it will be careful to establish none of a permanent nature which will not be permanently useful. With this general presumption the Constitution anticipates no material inconvenience from the permanency of judicial offices connected with permanent emoluments. And though it should have foreseen that cases might happen in which the service was not needed, yet there is no difficulty whatever in the supposition that it was willing to encounter the trivial contingent evil of having to maintain a few superfluous officers, in order to obtain the immense good of establishing and securing the independence of the courts of justice. The readiness of the officer to render service at the will of the government is the

consideration, as to him, for continuing the compensation. But the essential inducement is the public utility incident to the independency of the judicial character. As to the supposition of an enormous abuse of power by creating a long list of sinecures and a numerous host of pensioners, whenever such a thing shall happen, it will constitute one of those extreme cases which, on the principle of necessity, may authorize extra-constitutional remedies. But these are cases which can never be appealed to for the interpretation of a Constitution, which, in meting out the powers of the government, must be supposed to adjust them on the presumption of a fair execution.

A further topic of argument is, that our doctrine would equally restrain the Legislature from abolishing offices held during pleasure. But this is not true. The two things stand on different ground. First, the Executive has such an agency in the enacting of laws, that, as a general rule, the displacement of the officer cannot happen against his pleasure. Second, the pleasure of the President, in all cases not particularly excepted, is understood to be subject to the direction of the law. Third, an officer during pleasure, having merely a revocable interest, the abolition of his office is no infringement of his right. In substance, he is a tenant *at the will of the government*, liable to be discontinued by the executive organ, in the form of a removal; by the legislative, in the form of an abolition of the office. These different considerations reconcile the legislative authority to abolish, with the prerogative of the Chief Magistrate to remove, and with the temporary right

of individuals to hold. And therefore there is no reason against the exercise of such an authority; nothing to form an exception to the *general competency of the legislative power to provide for the public welfare.* Very different is the case as to the judges. The most persuasive motives of public policy, the safety of liberty itself, require that the judges shall be independent of the legislative body; in order to maintain effectually the separation between the several departments. The provision that their compensation shall not be diminished, is a clear constitutional indication that their independence was intended to be guarded against the Legislature. The express declaration that they shall hold their offices during good behavior—that is, upon a condition *dependent on themselves*, is repugnant to the hypothesis that they shall hold at the *mere pleasure of others.* Provisions which profess to confer rights on individuals, are always entitled to a liberal interpretation in support of the rights, and ought not, without necessity, to receive an interpretation subversive of them. Provisions which respect the organization of a co-ordinate branch of the government, ought to be construed in such a manner as to procure for it stability and efficiency, rather than in such a manner as to render it weak, precarious, and dependent. These various and weighty reasons serve to establish strong lines of discrimination between judicial and other officers; and to prove that no inference can be drawn from the power of the Legislature as to the latter, which will be applicable to the former.

One more defence of this FORMIDABLE CLAIM is attempted to be drawn from the example of the judiciary establishment of Great Britain. It is observed that this establishment, the theme of copious eulogy on account of the independence of the judges, places those officers upon a footing far less firm than will be that of the judges of the United States, even admitting the right of Congress to abolish their offices by abolishing the courts of which they are members. And as one proof of the assertion, it is mentioned, that the English judges are removable by the king, on the address of the two houses of Parliament.

All this might be very true, and yet would prove nothing as to what is or ought to be the construction of our Constitution on this point. It is plain from the provisions respecting compensation, that the framers of that Constitution intended to prop the independence of our judges, beyond the precautions which have been adopted in England in respect to the judges of that country; and the intention apparent in this particular is an argument that the same spirit may have governed other provisions. Cogent reasons have been assigned, applicable to our system, and not applicable to the British system, for securing the independence of our judges against the legislative as well as against the executive power.

It is alleged that the statute of Great Britain of the 13 of William III. was the model from which the framers of our Constitution copied the provisions for the independence of our judiciary. It is certainly true, that the idea of the tenure of office during good

behavior, found in several of our constitutions, is borrowed from that source. But it is evident that the framers of our federal system did not mean to *confine* themselves to that model. Hence the restraint of the legislative discretion, as to compensation; hence the omission of the provision for the removal of the judges by the Executive, on the application of the two branches of the Legislature—a provision which has been imitated in some of the State governments.

This very omission affords no light inference, that it was the intention to depart from the principle of making the judges removable from office, by the co-operation or interposition of the legislative body. Why else was this qualification of the permanent tenure of the office, which forms a conspicuous feature in the British statute, and in some of the State constitutions, dropped in the plan of the federal government?

The insertion of it in the British statute may also be supposed to have been indicated by the opinion that without a special reservation, the words *during good behavior* would have imported an irrevocable tenure. If so, the precaution will serve to fortify our construction.

But, however it may seem in theory, in fact the difference in the genius of the two governments would tend to render the independence of the judges more secure under the British statute than it would be in this country, upon the construction which allows to Congress the right to abolish. The reason is this: From the Constitution of the British

monarchy, the thing chiefly to be apprehended is an overbearing influence of the crown upon the judges. The jealousy of executive influence resting upon more powerful motives in that country than in this, it may be expected to operate as a stronger obstacle there than here to an improper combination between the executive and legislative departments to invade the judiciary. Moreover, the British Executive has greater means of resisting parliamentary control than an American Executive has of resisting the control of an American Legislature; consequently the former would be in less danger than the latter, of being driven to a concurrence in measures hostile to the independence of the judges. And in both these ways, there would be greater security for the British than for the American judges.

Thus is it manifest, that in every attitude in which the subject has been placed, the argument is victorious against the power of Congress to abolish the judges. But what, alas! avails the demonstration of this important truth? The fatal blow has been struck! It is no longer possible to arrest the rash and daring arm of power! Can the proof that it has acted without right, without warrant, can this heal the wound? can this renovate the perishing Constitution? Yes, let us hope that this will be the case. Let us trust that the monitory voice of true patriotism will at length reach the ears of a considerate people, and will rouse them to a united and vigorous exertion for the restoration of their VIOLATED CHARTER; not by means, either disorderly or guilty, but by means which the Constitution will sanction and

reason approve. Surely this will be so. A people who, descrying tyranny at a distance, and guided only by the light of just principles, before they had yet felt the scourge of oppression, could nobly hazard all in defence of their rights; a people who, sacrificing their prejudices on the altar of experience, and spurning the artifices of insidious demagogues, could, as a deliberate act of national reason, adopt and establish for themselves a Constitution which bid fair to immortalize their glory and their happiness: such a people, though misled for a period, will not be the final victims of a delusion, alike inauspicious to their reputation and to their welfare. They will not long forget the fame they have so justly merited, nor give the world occasion to ascribe to accident what has hitherto been imputed to wisdom. They will disdain to herd with the too long list of degraded nations, who have bowed their necks to unworthy idols of their own creating—who, immolating their best friends at the shrine of falsehood, have sunk under the yoke of sycophants and betrayers. They will open their eyes and see the precipice on which they stand! They will look around and select from among the throng, the men who have heretofore established a claim to their confidence on the solid basis of able and faithful service; and they will, with indignation and scorn, banish from their favor the wretched impostors who, with honeyed lips and guileful hearts, are luring them to destruction! Admonished by the past, and listening again to the counsels of real friends, they will make a timely retreat from the danger which threatens; they will

once more arrange themselves under the banners of the Constitution; with anxious care will repair the breaches that have been made, and will raise new mounds against the future assaults of open or secret enemies!

LUCIUS CRASSUS.

NO. XVIII

April 8, 1802.

In order to cajole the people, the message abounds with all the commonplace of popular harangue, and prefers claims of merit, for circumstances of equivocal or of trivial value. With pompous absurdity are we told of the "*multiplication of men, susceptible of happiness*" (as if this susceptibility were a privilege peculiar to our climate), "*habituated to self-government, and valuing its blessings above all price.*" Fortunate it will be, if the present favorites of the people do not, before their reign is at an end, transform those blessings into curses, so serious and heavy, as to make even despotism a desirable refuge from the elysium of democracy.

In a country, the propensities of which are opposed even to necessary burdens, an alarm is attempted to be excited about the general tendency of government, "to leave to labor the *smallest* portion of its earnings on which it can subsist, and to *consume the residue* of what it was instituted to guard." It might have been well to have explained whether it is the *whole* of the earnings of labor which government is instituted to guard, or only the *residue* after deducting what is *necessary to enable it* to fulfil the

duty of protection. Representatives who share with their constituents in an excessive jealousy of executive abuses, are cantingly admonished to "circumscribe discretionary powers over money," though they are known to be already so limited, as that the Executive, even on the prospect of a rupture with a foreign power, would not possess the means of obtaining intelligence the most necessary for the proper direction of its measures. That the new administration has not boldly invaded the laws and withheld the funds applicable to the payment of the principal and interest of the public debt, is fastidiously proclaimed as *evidence* that "the public faith has been *exactly* maintained." The praise of a spirit of economy is attempted to be gained by the suppression of a trifling number of officers (a majority of whom had become unnecessary by the mere change of circumstances), and by declaiming, with affectation, against "*the multiplication of officers and the increase of expense.*" The proposition to reduce our insignificant *military establishment* (the actual number of troops probably not exceeding that which is intended to be retained) cannot be suggested, without tickling our ears with the trite but favorite maxim, that "*a standing army ought not to be kept up in time of peace.*" To make a display of concern for their prosperity, agriculture, manufactures, commerce, and navigation are introduced among the pageants of the piece; but, except as "to protection from *casual* embarrassments," we are sagaciously informed that these "GREAT PILLARS *of our prosperity* ought to be left *to take care of themselves.*" The carrying trade, however,

seems to engage more solicitude; no doubt that we may be terrified by the expectation of future evils, from a much-traduced instrument,[1] which *in time past* has done nothing but good, in spite of the gloomy predictions of patriotic seers.

Such are the minor features of this curious performance. Had these been its only blemishes, a regard to national reputation would have forbidden a comment; but connected as they are with schemes of innovation replete with great present mischief, and still greater future danger; designed as they are to varnish over projects which threaten to precipitate our nation from an enviable height of prosperity to that low and abject state from which it was raised by the establishment and wise administration of our present government, they become entitled to notice as additional indications of character and disposition.

The merits of the message have now been pretty fully discussed; but before it is dismissed it may be useful to take a view of it in another and a different light—as one link in a chain of testimony which the force of circumstances, at every step of the new administration, extorts from them, in favor of their predecessors.

The President, on the threshold of office, at the first opportunity of speaking to his constituents, in his very inaugural speech, full of a truth which the most rancorous prejudice cannot obscure, and not sufficiently reflecting on the inferences which would be drawn, proclaims aloud to the world, that a gov-

[1] The treaty with Great Britain.

ernment which he had disapproved in its institution, and virulently opposed in its progress, was in THE FULL TIDE OF SUCCESSFUL EXPERIMENT. In the last address he again unconsciously becomes the panegyrist of those whom he seeks to depreciate. The situation in which (humanly speaking) we have been preserved by the prudent and firm councils of the preceding administrations, amidst the revolutionary and convulsive throes, amidst the desolating conflicts, of Europe, is there a theme of emphatic gratulation. It shall not be forgotten, as the solitary merit of the address, that we are reminded of the *gratitude due to Heaven* for the blessings of this situation. Amidst the spurious symptoms of a spirit of reform, it is consoling to observe one which, in charity, ought to be supposed genuine. But it would not have diminished our conviction of its sincerity, if the instruments of Providence, in the accomplishment of the happy work, had not been entirely overlooked; since this would have been evidence of a willingness to acknowledge and retract error—to make reparation for injury. But though they have been overlooked by the message, the American people ought never for a moment to forget them. Their efforts and their struggles, their moderation and their energy, their care and their foresight; the mad and malignant opposition of their political adversaries; the charges of pusillanimity and perfidy lavished on the declaration of neutrality; the resistance to measures for avoiding a rupture with Great Britain; the attempt to rush at once into reprisals; the cry for war with the enemies of France, as the enemies

of republican liberty;—all these things should be forever imprinted on the memory of a just and vigilant nation. And in recollecting them, they should equally recollect that the opposers of the salutary plans to which they are so much indebted, were and are the zealous partisans of the present head of our government; who have at all times submitted to his influence and implicitly obeyed his nod; who never would have pursued with so much vehemence the course they did, had they known it to be contrary to the views of their chief: nor should it be forgotten that this chief, in the negotiation with the British minister, conducted by him as Secretary of State, acted precisely as if it had been his design to widen, not to heal, the breach between the two countries; that he at first *objected* to the declaration of neutrality; was afterwards reluctantly dragged into the measures connected with it; was believed by his friends not to approve the system of conduct of which he was the official organ; was publicly and openly accused by the then agent of the French republic with duplicity and deception, with having been the first to inflame his mind with ill impressions of the principles and views of leading characters in our government, not excepting the revered WASHINGTON; that this chief, at a very critical period of our affairs in reference to the war of Europe, withdrew from the direction of that department peculiarly charged with the management of our foreign relations, evidently to avoid being more deeply implicated in the consequences of the position which had been assumed by the administration, but

on the hollow pretence of a dislike to public life and a love of philosophic retirement. Citizens of America, mark the sequel and learn from it instruction! You have been since agitated to the centre, to raise to the first station in your government the very man who, at a conjuncture when your safety and your welfare demanded his stay, early relinquished a subordinate but exalted and very influential post, on a pretence as frivolous as it has proved to be insincere! Was *he*, like the virtuous Washington, forced from a beloved retreat by the unanimous and urgent call of his country? No; he stalked forth the champion of faction—having never ceased in the shade of his retreat, by all the arts of intrigue, to prepare the way to that elevation for which a restless ambition impatiently panted.

The undesigned eulogy of the men *who have been slandered out of the confidence of their fellow-citizens*, has not been confined to the situation of the country as connected with the war of Europe. In the view given of the very flourishing state of our finances, the worst of the calumnies against those men is refuted, and it is admitted, that in this article of vital importance to the public welfare, their measures have been provident and effectual beyond example. To the charge of a design to saddle the nation with a perpetual debt, a plain contradiction is given by the concession, that the provisions which have been made for it are so ample. as even to justify the relinquishment of a part no less considerable than the *whole of the internal revenue*. The same proposal testifies the brilliant success of our fiscal system

generally; and that it is more than equal to all that has been undertaken, to all that has been promised to the nation.

The report of the Secretary of the Treasury, as published, confirms this high commendation of the conduct of the *former administrations*. After relieving each State from the burden of its particular debt, by assuming the payment of it on account of the United States, in addition to the general debt of the nation; after settling the accounts between the States relatively to their exertions for the common defence in our revolutionary war, and providing for the balances found due to such of them as were creditors; after maintaining, with complete success, an obstinate and expensive war with the Indian tribes; after making large disbursements for the suppression of two insurrections against the government; after liberal contributions to the Barbary powers, to induce them to open to our merchants the trade of the Mediterranean; after incurring a responsibility for indemnities to a large amount, due to British merchants, in consequence of infractions of the treaty of peace by some of the States; after heavy expenditures for creating and supporting a navy, and for other preparations, to guard our independence and territory against the hostilities of a foreign nation;—after the accomplishment of all these very important objects, it is now declared to the United States, by the present head of the Treasury, by the confidential minister of the present Chief Magistrate, by the most subtle and implacable of the enemies of the former administrations, "That the

actual revenues of the Union are sufficient *to defray all the expenses, civil and military,* of government, *to the extent authorized by existing laws;* to meet ALL THE ENGAGEMENTS OF THE UNITED STATES; *and to discharge in fifteen years and a half* THE WHOLE OF OUR PUBLIC DEBT"—foreign as well as domestic, *new* as well as *old.* Let it be understood, that the revenues spoken of were *all provided under the two first administrations;* and that the "existing laws" alluded to were all passed under the same administrations; consequently, that *the revenues had not been increased, nor the expenses diminished, by the men who now hold the reins;* and then let it be asked, whether so splendid a result does not reflect the highest credit on those who in time past have managed the affairs of the nation? Does not the picture furnish matter not only for consolation, but even for exultation, to every true friend of his country? And amidst the joy which he must feel in the contemplation, can he be so unjust as to refuse the tribute of commendation to those by whose labors his country has been placed on so fair an eminence? Will he endure to see any part of the fruits of those labors blasted or hazarded, by a voluntary surrender of any portion of the means which are to insure the advantages of so bright a prospect?

In vain will envy or malevolence reply: "The happy situation in which we are placed is to be attributed, not to the labors of those who have heretofore conducted our affairs, but to an unforeseen and unexpected progress of our country." Candor and truth will answer: Praise is always due to public

men who take their measures in such a manner as to derive to the nation the benefit of favorable circumstances which are possible, as well as of those which are foreseen. If proportionate provision had not been made, concurrently with the progress of our national resources, the effect of them would not have been felt as to the past, and would not have been matured as to the future.

But why should it be pretended that the progress was not anticipated? In past experience, there were many data for calculation. The ratio of the increase of our population had been observed and stated; the extent and riches of our soil were known; the materials for commercial enterprise were no secret; the probable effect of the measures of the government, to foster and encourage navigation, trade, and industry, was well understood; and especially, the influence of the means which were adapted to augment our active capital, and to supply a fit and adequate medium of circulation, towards the increase of national wealth, was declared and insisted upon, in official reports. Though adventitious circumstances may have aided the result, it is certain, that a penetrating and comprehensive mind could be at no loss to foresee a progress to our affairs, similar to what has been experienced. Upon this anticipation, the assumption of the State debts, and other apparently bold measures of the government, were avowedly predicated, in opposition to the feeble and contracted views of the LITTLE POLITICIANS, who now triumph in the success of their arts, and enjoy the benefits of a policy, which they had

neither the wisdom to plan nor the spirit to adopt; idly imagining that the cunning of a demagogue and the talents of a statesman are synonymous. Consummate in the paltry science of courting and winning popular favor, they falsely infer that they have the capacity to govern, and they will be the last to discover their error. But let them be assured that the people will not long continue the dupes of their pernicious sorceries. Already the cause of truth has derived this advantage from the crude essays of their chief, that the film has been removed from many an eye. The credit of great abilities was allowed him by a considerable portion of those who disapproved his principles; but the short space of nine months has been amply sufficient to dispel that illusion; and even some of his most partial votaries begin to suspect that they have been mistaken in the OBJECT OF THEIR IDOLATRY.

LUCIUS CRASSUS.

LANSING OR BURR [1]

REASONS WHY IT IS DESIRABLE THAT MR. LANSING RATHER THAN COL. BURR SHOULD SUCCEED

1804.

1. Col. Burr has steadily pursued the track of democratic politics. This he has done either from

[1] Burr was in the midst of his fight with Jefferson, and Lansing received the regular Democratic nomination for Governor. Burr made a split, also received a nomination, and looked to the Federalists for support. Five days before Burr was nominated a meeting of leading Federalists was held in Albany, and Hamilton then read this paper. Lansing declined to run and Lewis was then nominated. The tendency of the Federalists was towards Burr, but Hamilton by his attitude divided them and Lewis was elected.

principle or from *calculation*. If the former, he is not likely now to change his plan, when the Federalists are prostrate, and their enemies predominant. If the latter, he will certainly not at this time relinquish the ladder of his ambition, and espouse the cause or views of the weaker party.

2. Though detested by some of the leading Clintonians, he is certainly not personally disagreeable to the great body of them, and it will be no difficult task for a man of talents, intrigue, and address, possessing the chair of government, to rally the great body of them under his standard, and thereby to consolidate for personal purposes, the mass of the Clintonians, his own adherents among the Democrats, and such Federalists as, from personal goodwill or interested motives, may give him support.

3. The effect of his elevation will be to reunite under a more adroit, able, and daring chief, the now scattered fragments of the Democratic party, and to reinforce it by a strong detachment from the Federalists. For though virtuous Federalists, who, from miscalculation, may support him, would afterwards relinquish his standard, a large number from various motives would continue attached to it.

4. A farther effect of his elevation by aid of the Federalists will be, to present to the confidence of New England, a man, already the man of the Democratic leaders of that country, and towards whom the mass of the people have no weak predilection, as their countryman, as the grandson of President Edwards, and the son of President Burr. In vain will certain men resist this predilection, when it can

be said, that he was chosen governor of this State, in which he was best known, principally, or in a great degree, by the aid of the Federalists.

5. This will give him fair play to disorganize New England, if so disposed; a thing not very difficult, when the strength of the Democratic party in each of the New England States is considered, and the natural tendency of our civil institutions is duly weighed.

6. The ill opinion of Jefferson, and jealousy of the ambition of Virginia, is no inconsiderable prop of good principles in that country. But these causes are leading to an opinion, that a dismemberment of the Union is expedient. It would probably suit Mr. Burr's views to promote this result, to be the chief of the Northern portion; and placed at the head of the State of New York, no man would be more likely to succeed.

7. If he be truly, as the Federalists have believed, a man of irregular and unsatiable ambition, if his plan has been to rise to power on the ladder of Jacobinic principles, it is natural to conclude that he will endeavor to fix himself in power by the same instrument; that he will not lean on a fallen and failing party, generally speaking, of a character not to favor usurpation and the ascendancy of a despotic chief. Every day shows, more and more, the much to be regretted tendency of governments entirely popular, to dissolution and disorder. Is it rational to expect that a man, who had the sagacity to foresee this tendency, and whose temper would permit him to bottom his aggrandizement on popular prejudices

and vices, would desert the system at a time when, more than ever, the state of things invites him to adhere to it?

8. If Lansing is governor, his personal character affords some security against pernicious extremes, and at the same time renders it morally certain, that the democratic party, already much divided and weakened, will moulder and break asunder more and more. This is certainly a state of things favorable to the future ascendancy of the wise and good. May it not lead to a recasting of parties, by which the Federalists will gain a great accession of force from former opponents? At any rate is it not wiser in them to promote a course of things, by which schism among the Democrats will be fostered and increased, than on fair calculation to give them a chief, better able than any they have yet had, to unite and direct them; and in a situation to infer rottenness in the only part of our country which still remains sound, the Federal States of New England?

LAW BRIEFS

VALIDITY OF CERTAIN BRITISH ACTS

Question. Will the acts (particularly judgments and executions) of courts, exercising jurisdiction under the authority of Great Britain, subsequent to the time when by the treaty of peace the Western posts ought to have been delivered up, within the districts comprehending those posts, be recognized as valid by the courts of the United States?

This question is both new and difficult. The argument for the negative is—that the treaty of peace having admitted those territories to be within the United States, the detention of them after the time when they ought to have been surrendered, and all exercise of inspection over them by Great Britain after that time, to be wrongful and unlawful; especially as not sanctioned by the *jus belli*, there being a state of peace, consequently the tribunals of Great Britain are illegal and incompetent, interfering with those of the United States, and their acts as nullities.

The argument for the affirmative is—that Great Britain being antecedently in the possession of those posts (*jure belli*) and not having actually restored them to the jurisdiction of the United States after the peace, her anterior jurisdiction must be supposed to have continued, and that of the United States in virtue of territorial right, suspended by the adverse possession of a foreign sovereign power; that, therefore, there was no interference of jurisdiction, especially as the United States had not within the districts in question any competent organs to exercise jurisdiction. That the treaty of peace having only stipulated that the posts should be delivered up as soon as conveniently might be, there was no *judicial epoch* from which to date the cessation of British jurisdiction and the commencement of American.

That the wrongful detention was a question between the two governments foreign to the fact of jurisdiction, as it respected individuals and the effects of it. That with regard to those who were under the coercion of the jurisdiction *in fact*, and whose

mutual dealings had reference to it, *the legal effects* ought to be according to *the fact*. That convenience and legal justice will both be promoted by this principle and extremely infringed by its opposite.

It is impossible to foresee with certainty what will be the determination of the courts of the United States on the point; but it is conceived that the argument for the affirmative, on great principles of policy, convenience, and right, ought to prevail, and it is presumed that it will.

CARRIAGE TAX [1]

February 24, 1795.

What is the distinction between *direct* and *indirect* taxes? It is a matter of regret that terms so uncertain and vague in so important a point are to be found in the Constitution. We shall seek in vain

[1] Hamilton, when Secretary of the Treasury, recommended a tax on pleasure carriages and Madison opposed it in the House on the ground that it was a direct tax, and therefore unconstitutional. The bill laying the tax became a law, and certain persons in Virginia refused to pay the tax, taking Madison's position as to its unconstitutionality. The case came before the Supreme Court, and Hamilton appeared for the government with the Attorney-General of the United States. One of the newspapers said next day (Feb. 25th): "Yesterday, in the Supreme Court of the United States, Mr. Hamilton, late Secretary of the Treasury, made a most eloquent speech in support of the constitutionality of the carriage tax. He spoke for three hours, and the whole of his argument was clear, impressive, and classical. The audience, which was very numerous, and among whom were many foreigners of distinction and many of the Members of Congress, testified the effect produced by the talents of this great orator and statesman."

All that now remains of the argument is the fragment of a brief given above. The case was Hylton *vs.* the United States, and is reported 1 Dallas, 171. The court sustained Hamilton's view, and held unanimously that the tax was not direct and therefore constitutional.

for any antecedent settled legal meaning to the respective terms—there is none.

We shall be as much at a loss to find any disposition of either which can satisfactorily determine the point.

Shall we call an indirect tax, a tax which is ultimately paid by a *person, different* from the one who pays it in the first instance?

Truly speaking, there is no such tax—those on imported articles best claim the character. But in many instances the merchant cannot transfer the tax to the buyer; in numerous cases it falls on himself, partly or wholly. Besides, if the same article which is imported by a merchant for *sale*, is imported by a merchant for *his own use*, or by a lawyer, a physician, or mechanic, for his own use, there can be no question about the *transfer* of the tax. It remains upon him who pays it.

According to that rule, then, the same tax may be both a *direct* and *indirect* tax, which is an absurdity. To urge that a man may either buy an article already imported, or import it himself, amounts to nothing; sometimes he could not have that option.

But the option of an individual cannot alter the nature of a thing. In like manner he might avoid the tax on carriages by hiring occasionally instead of buying.

The *subject* of taxation, not the *contingent* optional conduct of individuals, must be the criterion of direct or indirect taxation. Shall it be said that an indirect tax is that of which a man is not conscious when he pays? Neither is there any such tax. The

ignorant may not see the tax in the enhanced price of the commodity—but the man of reflection knows it is there. Besides, when any *but* a merchant pays, as in the case of the lawyer, etc., who imports for himself, he cannot but be conscious that it falls upon himself.

By this rule, also, then a tax would be both *direct* and *indirect*—and it will be equally impracticable to find any other precise or satisfactory criterion.

In such a case no construction ought to prevail calculated to defeat the express and necessary authority of the government.

It would be contrary to reason, and to every rule of sound construction, to adopt a principle for regulating the exercise of a clear constitutional power which would defeat the exercise of the power.

It cannot be contested that a duty on carriages specifically is as much within the authority of the government as a duty on lands or buildings.

Now, if a duty on carriages is to be considered as a *direct tax*, to be apportioned according to the rates of representation, very absurd consequences must ensue.

'T is *possible* that a particular State may have no carriages of the description intended to be taxed, or a very small number.

But each State would have to pay a proportion of the sum to be laid, according to its relative numbers; yet, while the State would have to pay a quota, it might have no carriages upon which its quota could be assessed, or so few, as to render it ruinous to the owners to pay the tax. To consider then a duty on

carriages as a direct tax, may be to defeat the power of laying such a duty. This is a consequence which ought not to ensue from construction.

Further: If the tax on carriages be a direct tax, that on ships according to their tonnage must be so likewise. Here is not a consumable article. Here the tax is paid by the owner of the thing taxed, from time to time, as would be the tax on carriages.

If it be said that the tax is indirect because it is alternately paid by the freighter of the vessel, the answer is, that sometimes the owner is himself the freighter, and at other times the tonnage accrues *when* there is no *freight*, and is a dead charge on the owner of the vessel.

Moreover, a tax on a hackney or stage-coach or other carriage, or on a dray or cart employed in transporting commodities for hire, would be as much a charge on the freight as a tax upon vessels; so that, if the latter be an indirect tax, the former cannot be a direct tax.

And it would be too great a refinement for a rule of practice in government to say, that a tax on a hackney or stage-coach, and upon a dray or cart, is an indirect one, and yet a tax upon a coach or wagon ordinarily used for the purposes of its owner, is a direct one.

The only known source of the distinction between direct and indirect taxes is in the doctrine of the French Economists—Locke and other speculative writers—who affirm that all taxes fall ultimately upon land, and are paid out of its produce, whether laid immediately upon itself, or upon any other thing.

Hence, taxes upon lands are in that system called *direct* taxes; those on all other articles *indirect* taxes.

According to this, land taxes only would be *direct* taxes, but it is apparent that something more was intended by the Constitution. In one case, a capitation is spoken of as a direct tax.

But how is the meaning of the Constitution to be determined? It has been affirmed, and so it will be found, that there is no general principle which can indicate the boundary between the two. That boundary, then, must be fixed by a species of arbitration, and ought to be such as will involve neither absurdity nor inconvenience.

The following are presumed to be the only direct taxes.

Capitation or poll taxes.

Taxes on lands and buildings.

General assessments, whether on the whole property of individuals, or on their whole real or personal estate; all else must of necessity be considered as indirect taxes.

To apply a rule of apportionment according to numbers to taxes of the above description, has some *rationale* in it; but to extend an apportionment of that kind to other cases, would, in many instances, produce, as has been seen, preposterous consequences, and would greatly embarrass the operations of the government. Nothing could be more capricious or outré, than the application of quotas in such cases.

The Constitution gives power to Congress to lay and collect the taxes, duties, imposts, and excises,

requiring that all duties, imposts, and excises shall be uniform throughout the United States.

Here *duties*, *imposts*, and *excises* appear to be contradistinguished from *taxes*, and while the latter is left to apportionment, the former are enjoined to be uniform.

But, unfortunately, there is equally here a want of criterion to distinguish *duties*, *imposts*, and *excises* from taxes.

If the meaning of the word *excise* is to be sought in the British statutes, it will be found to include the duty on carriages, which is there considered as an *excise*, and then must necessarily be uniform and not liable to apportionment; consequently not a direct tax.

An argument results from this, though not perhaps a conclusive one: yet where so important a distinction in the Constitution is to be realized, it is fair to seek the meaning of terms in the statutory language of that country from which our jurisprudence is derived.

THE LAW OF LIBEL[1]

1804.

I.—The liberty of the press consists in the right to publish with impunity truth, with good motives, for justifiable ends, though reflecting on government, magistracy, or individuals.

II.—That the allowance of this right is essential to

[1] This is the brief in the Croswell case, and the argument as reported follows.

the preservation of free government—the disallowance of it, fatal.

III.—That its abuse is to be guarded against by subjecting the exercise of it to the animadversion and control of the tribunals of justice; but that this control cannot safely be intrusted to a permanent body of magistracy, and requires the effectual co-operation of court and jury.

IV.—That to confine the jury to the mere question of publication and the application of terms, without the right of inquiry into the intent or tendency, referring to the court the exclusive right of pronouncing upon the construction, tendency, and intent of the alleged libel, is calculated to render nugatory the function of the jury; enabling the court to make a libel of any writing whatsoever, the most innocent or commendable.

V.—That it is the general rule of criminal law, that the intent constitutes the crime, and that it is equally a general rule that the intent, mind, or *quo animo*, is an inference of fact to be drawn by the jury.

VI.—That if there are exceptions to this rule, they are confined to cases in which not only the principal fact, but its circumstances can be and are specifically defined by statute or judicial precedent.

VII.—That in respect to libel there is no such specific and precise definition of facts and circumstances to be found, that consequently it is difficult, if not impossible, to pronounce that any writing is *per se* and exclusive of all circumstances libellous; that its libellous character must depend on intent and tendency, the one and the other being matter of fact.

VIII.—That the definitions or descriptions of libels to be found in the books predicate them upon some malicious or mischievous intent or tendency, to expose individuals to hatred or contempt, or to occasion a disturbance or breach of the peace.

IX.—That in determining the character of a libel, the truth or falsehood is in the nature of things a material ingredient, though the truth may not always be decisive, but being abused, may still admit of a malicious and mischievous intent which may constitute a libel.

X.—That in the Roman law, one source of the doctrine of libel, the truth in cases interesting to the public, may be given in evidence. That the ancient statutes probably declaratory of the common law, make the falsehood an ingredient of the crime. That ancient precedents in the courts of justice correspond, and that these precedents to this day charge a malicious intent.

XI.—That the doctrine of excluding the truth as immaterial originated in a tyrannical and polluted source, the court of Star Chamber, and that though it prevailed a considerable length of time, yet there are leading precedents down to the Revolution, and even since, in which a contrary practice prevailed.

XII.—That this doctrine being against reason and natural justice, and contrary to the original principles of the common law enforced by statutory provisions, precedents which support it deserve to be considered in no better light than as *malus usus* which ought to be abolished.

XIII.—That in the general distribution of powers in our system of jurisprudence, the cognizance of law belongs to the court, of fact to the jury; that as often as they are not blended, the power of the court is absolute and exclusive. That in civil cases it is always so, and may rightfully be so exerted. That in criminal cases the law and fact being always blended, the jury, for reasons of a political and peculiar nature, for the security of life and liberty, is intrusted with the power of deciding both law and fact.

XIV.—That this distinction results: 1, from the ancient forms of pleading in civil cases, none but special pleas being allowed in matter of law; in criminal, none but the general issue; 2, from the liability of the jury to attaint in civil cases, and the general power of the court as its substitute in granting new trials, and from the exemption of the jury from attaint in criminal cases, and the defect of power to control their verdicts by new trials, the test of every legal power being its capacity to produce a definitive effect liable neither to punishment nor control.

XV.—That in criminal cases, nevertheless, the court are the constitutional advisers of the jury in matter of law; who may compromit their conscience by lightly or rashly disregarding that advice, but may still more compromit their consciences by following it, if exercising their judgments with discretion and honesty they have a clear conviction that the charge of the court is wrong.

SPEECH IN THE CASE OF HARRY CROSWELL[1]

May it please the Court:

In rising to address your honors at so late a period of the day, and after your attention has been so much fatigued, and the cause has been so ably handled, I may say, so exhausted, I feel a degree of embarrassment which it is with difficulty I can surmount. I fear lest it should not be possible for me to interest the attention of the court on the subject on which I have to speak. Nevertheless, I have a duty to perform, of which I cannot acquit myself, but by its execution. I have, however, this consolation, that though I may fail in the attempt, I

[1] This speech in the celebrated case of the People against Harry Croswell, on an indictment for libel on Thomas Jefferson, President of the United States, was delivered before the Supreme Court of the State of New York, in the year 1804, by Mr. Hamilton, for the defendant, on a motion for a new trial.

The indictment in this case charged that Harry Croswell, late of the city of Hudson, in the county of Columbia, New York, printer, being a malicious and seditious man, of a depraved mind, and wicked and diabolical disposition; and also deceitfully, wickedly, and maliciously devising, contriving, and intending Thomas Jefferson, Esq., President of the United States of America, to detract from, scandalize, traduce, vilify, and to represent him, the said Thomas Jefferson, as unworthy of the confidence, respect, and attachment of the people of the said United States, and to alienate and withdraw from the said Thomas Jefferson, Esq., President as aforesaid, the obedience, fidelity, and allegiance of the citizens of the State of New York, and also of the said United States; and wickedly and seditiously to disturb the peace and tranquillity, as well of the people of the State of New York, as of the United States; and also to bring the said Thomas Jefferson, Esq. (as much as in him, the said Harry Croswell, lay), into great hatred, contempt, and disgrace, not only with the people of the State of New York, and the said people of the United States of America, but also with the citizens and subjects of other nations, and for that purpose the said Harry Croswell did, on the ninth of September, in the year of our Lord 1802, with force and arms, at the said city of Hudson, in the said

shall be justified by the importance of the question. I feel that it is of the utmost magnitude; of the highest importance viewed in every light. First, as it regards the character of the head of our nation; for, if indeed the truth can be given in evidence, and that truth can, as stated in the indictment, be established, it will be a serious truth, the effect of which it will be impossible to foresee. It is important also as it regards the boundaries of power between the constituent parts of our constitutional tribunals, to which we are, for the law and the fact, to resort—our judges and our juries. It is important, as it regards settling the right principles that may be applied to the case, in giving to either the one or the other the authority destined to it by the spirit and

county of Columbia, wickedly, maliciously, and seditiously print and publish, and cause and procure to be printed and published, a certain scandalous, malicious, and seditious libel, in a certain paper or publication entitled *The Wasp;* containing therein, among other things, certain scandalous, malicious, inflammatory, and seditious matters of and concerning the said Thomas Jefferson, Esq., then and yet being President of the United States of America; that is to say, in one part thereof according to the tenor and effect following, that is to say Jefferson (the said Thomas Jefferson, Esq., meaning) paid Callendar (meaning one James Thompson Callendar) for calling Washington (meaning George Washington, Esq., deceased, late President of the United States) a traitor, a robber, and a perjurer; for calling Adams (meaning John Adams, Esq., late President of the United States) a hoary-headed incendiary, and for most grossly slandering the private characters of men whom he (meaning the said Thomas Jefferson) well knew to be virtuous, to the great scandal and infamy of the said Thomas Jefferson, Esq., in contempt of the people of the State of New York, in open violation of the laws of the said State, to the evil example of all others in like case offending, and against the peace of the people of the State of New York, and their dignity.

All that need be said in addition is that Hamilton won the case, which attracted great attention, both from its political bearings and the important principles of law which it involved.

letter of our law. It is important on account of the influence it must have on the rights of our citizens. Viewing it, therefore, in these lights, I hope I shall, in the arduous attempt, be supported by its importance, and if any doubt hangs on the mind of the court, I shall, I trust, be able to satisfy them that a new trial ought to be had.

The question branches itself into two divisions. The first as to the truth—whether, under a general issue of not guilty, it ought to be given in evidence. The other, as to the power of the court—whether it has a right, exclusively, over the intent, or whether that and the law do not constitute one complicated fact, for the cognizance of the jury, under the direction of the judge. The last, I trust, can be made to appear, on the principle of our jurisprudence, as plainly as it is possible to evince anything to a court; and that, in fact, there are no precedents which embrace the doctrines of the other side, or rather that they are so diverse and contrarient that nothing can arise from them to make an application to this case.

After these preliminary observations, and before I advance to the full discussion of this question, it may be necessary for the safety and accuracy of investigation, a little to define what this liberty of the press is, for which we contend, and which the present doctrines of those opposed to us, are, in our opinions, calculated to destroy.

The liberty of the press consists, in my idea, in publishing the truth, from good motives and for justifiable ends, though it reflect on the government, on

magistrates, or individuals. If it be not allowed, it excludes the privilege of canvassing men, and our rulers. It is in vain to say, you may canvass measures. This is impossible without the right of looking to men. To say that measures can be discussed, and that there shall be no bearing on those who are the authors of those measures, cannot be done. The very end and reason of discussion would be destroyed. Of what consequence to show its object? Why is it to be thus demonstrated, if not to show, too, who is the author? It is essential to say, not only that the measure is bad and deleterious, but to hold up to the people who is the author, that, in this our free and elective government, he may be removed from the seat of power. If this be not to be done, then in vain will the voice of the people be raised against the inroads of tyranny. For, let a party but get into power, they may go on from step to step, and, in spite of canvassing their measures, fix themselves firmly in their seats, especially as they are never to be reproached for what they have done. This abstract mode, in practice, can never be carried into effect. But if, under the qualifications I have mentioned, the power be allowed, the liberty for which I contend will operate as a salutary check. In speaking thus for the freedom of the press, I do not say there ought to be an unbridled license; or that the characters of men who are good will naturally tend eternally to support themselves. I do not stand here to say that no shackles are to be laid on this license.

I consider this spirit of abuse and calumny as the

pest of society. I know the best of men are not exempt from the attacks of slander. Though it pleased God to bless us with the first of characters, and though it has pleased God to take him from us and this band of calumniators, I say that falsehood eternally repeated would have affected even his name. Drops of water, in long and continued succession, will wear out adamant. This, therefore, cannot be endured. It would be to put the best and the worst on the same level.

I contend for the liberty of publishing truth, with good motives and for justifiable ends, even though it reflect on government, magistrates, or private persons. I contend for it under the restraint of our tribunals. When this is exceeded, let them interpose and punish. From this will follow none of those consequences so ably depicted. When, however, we do look at consequences, let me ask whether it is right that a permanent body of men, appointed by the executive, and, in some degree, always connected with it, should exclusively have the power of deciding on what shall constitute a libel on our rulers, or that they shall share it, united with a changeable body of men chosen by the people. Let our juries still be selected, as they now are, by lot. But it cannot be denied, that every body of men is, more or less, liable to be influenced by the spirit of the existing administration; that such a body may be liable to corruption, and that they may be inclined to lean over towards party modes. No man can think more highly of our judges, and I may say personally so of those who now preside, than myself;

but I must forget what human nature is, and how her history has taught us that permanent bodies may be so corrupted, before I can venture to assert that it cannot be. As then it may be, I do not think it safe thus to compromise our independence. For though, as individuals, the judges may be interested in the general welfare, yet, if once they enter into these views of government, their power may be converted into the engine of oppression. It is in vain to say that allowing them this exclusive right to declare the law, on what the jury has found, can work no ill; for, by this privilege, they can assume and modify the fact, so as to make the most innocent publication libellous. It is therefore not a security to say, that this exclusive power will but follow the law. It must be with the jury to decide on the intent; they must in certain cases be permitted to judge of the law, and pronounce on the combined matter of law and of fact. Passages have been adduced from Lord Mansfield's declarations to show that judges cannot be under the influence of an administration. Yet still it would be contrary to our own experience, to say that they could not. I do not think that even as to our own country it may not be. There are always motives and reasons that may be held up. It is therefore still more necessary, here, to mingle this power, than in England. The person who appoints there, is hereditary. That person cannot alone attack the judiciary; he must be united with the two Houses of Lords and of Commons, in assailing the judges. But, with us, it is the vibration of party. As one side or the other

prevails, so of that class and temperament will be the judges of their nomination. Ask any man, however ignorant of principles of government, who constitute the judiciary, he will tell you the favorites of those at the head of affairs. According then to the theory of this our free government, the independence of our judges is not so well secured as in England. We have here reasons for apprehension not applicable to them. We are not, however, to be now influenced by the preference to one side or the other. But of which side soever a man may be, it interests all, to have the question settled, and to uphold the power of the jury, consistently however with liberty, and also with legal and judicial principles, fairly and rightly understood. None of these impair that for which we contend—the right of publishing the truth, from good motives and justifiable ends, though it reflect on government, on magistrates, or individuals.

Some observations have, however, been made in opposition to these principles. It is said, that as no man rises at once high into office, every opportunity of canvassing his qualities and qualifications is afforded, without recourse to the press; that his first election ought to stamp the seal of merit on his name. This, however, is to forget how often the hypocrite goes from stage to stage of public fame, under false array, and how often, when men obtain the last object of their wishes, they change from that which they seemed to be; that men, the most zealous reverers of the people's rights, have, when placed on the highest seat of power, become their most deadly

oppressors. It becomes, therefore, necessary to observe the actual conduct of those who are thus raised up.

I have already shown that, though libelling shall continue to be a crime, it ought to be so only when under a restraint, in which the court and the jury shall co-operate. What is a libel that it should be otherwise? Why take it out of the rule that allows, in all criminal cases, when the issue is general, the jury to determine upon the whole? What is then a libel to produce this? That great and venerable man, Lord Camden, already cited with so much well-deserved eulogy, says that he has never yet been able to form a satisfactory definition. All essays made towards it are neither accurate nor satisfactory; yet, such as they are, I shall cite them and animadvert.

Blackstone and Hawkins declare that it is any malicious defamation, with an intent to blacken the reputation of any one, dead or alive.

The criminal quality is its maliciousness. The next ingredient is, that it shall have an intent to defame. I ask, then, if the intent be not the very essence of the crime. It is admitted that the word falsity, when the proceedings are on the statute, must be proved to the jury, because it makes the offence. Why not then the malice, when, to constitute the crime, it must necessarily be implied? In reason there can be no difference.

A libel is, then, a complicated matter of fact and law, with certain things and circumstances to give them a character. If so, then the malice is to be

proved. The tendency to provoke is its constituent. Must it not be shown how and in what manner? If this is not to be the case, must every one who does not panegyrize be said to be a libeller? Unless the court are disposed to go to that extreme length, it is necessary that the malice and intent must be proved. To this it is certain the definition of Lord Coke may, in some degree, be opposed. He does seem to superadd "the breach of the peace." Lord Coke, however, does not give this as a specific definition; and even then the defamatory writing, which he particularizes, includes the question both of intent and malice. The breach of the peace, therefore, is not made the sole, but only one of the qualities. The question is not on the breaking of the peace, but depends on time, manner, and circumstances, which must ever be questions of fact for jury determination. I do not advocate breaking the peace; observations may be made on public men, which are calculated merely to excite the attention of the community to them; to make the people exercise their own functions, which may have no tendency to a breach of the peace, but only to inspection. For surely a man may go far in the way of reflecting on public characters, without the least design of exciting tumult. He may only have it in view to rouse the nation to vigilance and a due exertion of their right to change their rulers. This, then, being a mere matter of opinion, can it be not a matter for them to judge of to whom it is addressed? The court, to be sure, may, like a jury, and in common with them, have the legal power and moral discernment to

determine on this; yet it does not arise out of the writing, but by adverting to the state of things and circumstances. It, therefore, answers no purpose to say it has a tendency to a breach of the peace.

Lord Loughborough, in the *Parl. Chron.*, 644, 657, instances that passages from holy writ may be turned into libels.

Lord Thurlow admits that this may happen, and that time and circumstances may enter into the question. He, it is true, sanctioned the doctrines of our opponents, but allowed time and circumstances to be ingredients; and, strange to say, though these are extrinsic to the record, was of opinion for the old law. Lord Thurlow says, however, that it might be something more than a bare libel—intimating here that it may be even treason; and is it not, then, to confess that intent is a matter of fact? If so, who or where shall be the forum but the jury?

My definition of a libel is, and I give it with all diffidence after the words of Lord Camden—my definition, then, is this: I would call it a slanderous or ridiculous writing, picture, or sign, with a malicious or mischievous design or intent, towards government, magistrates, or individuals. If this definition does not embrace all that may be so called, does it not cover enough for every beneficial purpose of justice? If it have a good intent, it ought not to be a libel, for it then is an innocent transaction; and it ought to have this intent, against which the jury have, in their discretion, to pronounce. It shows itself to us as a sentence of fact. Crime is a matter of fact by the code of our jurisprudence. In my opin-

ion, every specific case is a matter of fact, for the law gives the definition. It is some act in violation of law. When we come to investigate, every crime includes an intent. Murder consists in killing a man with malice prepense. Manslaughter, in doing it without malice, and at the moment of an impulse of passion. Killing may even be justifiable, if not praiseworthy, as in defence of chastity about to be violated. In these cases the crime is defined, and the intent is always the necessary ingredient. The crime is matter of law, as far as definition is concerned; fact, as far as we are to determine its existence.

But it is said the judges have the right, on this fact, to infer the criminal intent, that being matter of law. This is true; but what do we mean by these words, unless the act dependent on and united with its accessories, such as the law has defined, and which when proved constitute the crime? But whether the jury are to find it so with all its qualities, is said to be a question; no act, separate from circumstances, can be criminal, for without these qualities it is not a crime. Thus, as I have before instanced, murder is characterized by being with malice prepense; manslaughter, by being involuntary; justifiable homicide, by having some excuse. Killing, therefore, is not a crime; but it becomes so in consequence of the circumstances annexed. In cases that are, in the general opinion of mankind, exceptions to the explanations I have given, the law contemplates the intent. In duelling, the malice is supposed, from the deliberate acts of reflecting, send-

ing a challenge, and appointing the time and place of meeting. Here, it is true, the law implies the intent; but then, let it be remembered that it is in consequence of its having previously defined the act, and forbidden its commission. This too is on the principle of natural justice, that no man shall be the avenger of his own wrongs, especially by a deed alike interdicted by the laws of God and of man. That, therefore, the intent shall in this case constitute the crime, is because the law has declared it shall be so. It is impossible to separate a crime from the intent. I call on those opposed to us to say what is a libel. To be sure they have told us that it is any scandalous publication, etc., which has a tendency to a breach of the peace. This, indeed, is a broad definition, which must, for the purpose of safety, be reduced to a positive fact, with a criminal intent. In this there is no violation of law: it is a settled maxim, that *mens facit reum; non reus, nisi sit mens rea.*

When a man breaks into a house it is the intent that makes him a felon. It must be proved to the jury that it was his intention to steal; they are the judges of whether the intent was such, or whether it was innocent. Then so, I say, should it be here; let the jury determine, as they have the right to do, in all other cases, on the complicated circumstances of fact and intent. It may, as a general and universal rule, be asserted that the intention is never excluded in the consideration of the crime. The only case resorted to, and which is relied on by the opposite side (for all the others are built upon it), to show a contrary doctrine, was a star-chamber decision. To

prove how plainly the intent goes to the constituting the crime of libel, the authority cited by the counsel associated with me, is fully in point. In that, the letter written to the father, though (as far as words were concerned) perfectly a libel, yet having been written for the purpose of reformation, and not with an intent to injure, was held not to amount to a libel. Suppose persons were suspected of forging public papers, and this communicated by letter to the Secretary of State, with a good design, still if the doctrines contended for were to prevail, it would be libellous and punishable, though the party not only did it with the best of motives, but actually saved the State. In madness and idiocy, crimes may be perpetrated, nay, the same malicious intent may exist, but the crime does not. These things tend to show that the criminality of an act is a matter of fact and law combined, and on which it cannot belong to the exclusive jurisdiction of the court to decide the intent; for the question is forever a question of fact.

The criminal intent, says Lord Mansfield, in the Dean of St. Asaph's case, is what makes the crime.

Here, that truly great man—for great he was, and no one more fully estimates him than I do, yet he might have some biases on his mind not extremely favorable to liberty,—here, then, he seems to favor the doctrine contended for; but he will be found to be at times contradictory, nay, even opposed to himself. "A criminal intent in doing a thing in itself criminal, without a lawful excuse, is an inference of law." How can that be in itself criminal which admits of a lawful excuse? Homicide is not in itself a

crime, therefore it is not correct to say a criminal intent can be inferred, because a lawful excuse may be set up. A thing cannot be criminal which has a lawful excuse, but as it may have a certain quality which constitutes the crime. To be sure you may go on to say that where the intent bestows the character of criminality on an act indifferent, then it is a matter of fact, and not where the act is bad in itself. But this is begging the question. We contend that no act is criminal, abstracted and divested of its intent. Trespass is not in itself innocent. No man has a right to enter another's land or house. Yet it becomes in this latter case felony only in one point of view, and whether it shall be holden in that point is a subject of jury determination. Suppose a man should enter the apartments of a king; this, in itself, is harmless, but if he do it with intent to assassinate, it is treason. To whom must this be made to appear in order to induce conviction? To the jury. Let it rather be said that crime depends on intent, and intent is one parcel of the fact. Unless, therefore, it can be shown that there is some specific character of libel that will apply in all cases, intent, tendency, and quality must all be matters of fact for a jury. There is therefore, nothing which can be libel, independent of circumstances; nothing which can be so called in opposition to time and circumstances. Lord Loughborough, indeed, in the parliamentary debates on this very subject, to which I have referred the court, admits this to be the case. Lord Mansfield, embarrassed with the truth and strength of the doctrine, endeavors to contrast meaning with intent.

He says that the truth may be given in evidence to show the meaning, but not the intent. If this can be done to show the application where the person is imperfectly described, why not to prove the intent, without which the crime cannot be committed? Whatever is done collaterally must show this, and in all cases collateral facts are for the jury. The intent here has been likened to the construction of a deed, or any unwritten instrument, in all of which the intent is for the court. But the comparison will not hold; for even there the intent may be inquired *aliunde*. When you go to quality and explain, what is this but to decide on the intent by matters of fact? Lord Mansfield is driven into this contradiction when, on one occasion, he says it is a matter on which the jury may exercise their judgment, and in another that it is not. I am free to confess, that in all difficult cases, it is the duty of a jury to hearken to the directions of a judge with very great deference. But if the meaning must be either on the face of the libel or from any thing *aliunde*, then it must be a matter of fact for the jury. That the *quo animo* affects the constitution of libel, cannot be disputed, and must be inquired of by somebody. Now, unless this is tried by the jury, by whom is it to be determined? Will any man say, that in the case of the star chamber, respecting the letter written to the child's father, the intent was not the reason why it was held innocent, and the *quo animo* not gone into? Did they not then endeavor to prove the guilt by the intent? Now, if you are to show things malicious *aliunde*, you may defend by the same means. The *mens* is the

question, and in common parlance it is that to which we resort to show guilt. II. Mod., the Queen *vs.* Brown, will explain how it is to be found. Nay, in this very case, when the counsel for the defendant objected to the attorney-general reading passages from the prospectus of the *Wasp*, and from other numbers, he expressly avowed that he thus acted in order that the jury might see it to be "manifest that the intent of the defendant was malicious." This, I here observe, is a mistake that law officers would not be very apt to slide into. Yet, on this very intent, this malicious intent thus proved to the jury, and on which they founded their verdict, is the court now asked to proceed to judgment. To demonstrate how fully this matter of intent is by our law a subject of jury determination, suppose the grand jury had, in the present case, returned to the bill *ignoramus;* on what would they have founded their return? Is not this, then, a precedent that the *quo animo* is for a jury? If it be necessary only to find the publication, why is not the grand jury competent for the whole? For if the supposition is that the grand jury may decide on the finding of the bill, surely the petit jury may acquit. If so, then is the case I have mentioned an important precedent. In Rex *vs.* Horne, an authority that has been justly urged, the principle is allowed. It appears there that the jury are to exercise their judgment from the nature of the act, what is its intent. Into a confession of this is Lord Mansfield himself driven. Regina *vs.* Fuller, we are told from the other side, was a case on the statute for *scandalum magnatum.* Of this, however, I can find

no trace in the books, and there Lord Holt, repeatedly interrogated as to the truth, would have allowed it to be given in evidence, and directed the jury that if they did not believe the allegations false, they were not to find the defendant guilty. This, then, is a decision, as we contend, that not only the intent, but the truth is important to constitute the crime, and nothing has been shown against it. Nay, Lord Holt goes on still further; he bids the jury consider whether the papers have not a tendency to beget sedition, riot, and disturbance. Surely this authority of that great man demonstrates that intent and tendency are matters of fact for a jury. This argument will be further strengthened when I enumerate those cases where truth has been permitted to be shown. But before I do that, I must examine how far truth is to be given in evidence. This depends on the intent being a crime. Its being a truth is a reason to infer that there was no design to injure another. Thus, not to decide on it would be injustice, as it may be material in ascertaining the intent. It is impossible to say that to judge of the quality and nature of an act, the truth is immaterial. It is inherent in the nature of things, that the assertion of truth cannot be a crime. In all systems of law this is a general axiom, but this single instance, it is attempted to assert, creates an exception, and is therefore an anomaly. If, however, we go on to examine what may be the case that shall be so considered, we cannot find it to be this. If we advert to the Roman Law, we shall find that Paulus and Pereizius take a distinction between those truths which relate to

private persons and those in which the public are interested. Vinnius lays it down in the doctrine cited by the associate counsel who last spoke. If, then, we are to consider this a doctrine to be adopted in all that relates to public men, it ought now to be received. When we advert to the statutes they confirm our positions. Those statutes are indisputably declaratory of the early law. We know that a great part of the common law has been, for certainty, reduced to statutes. Can we suppose that the common law did not notice that no punishment was to be inflicted for speaking the truth, when we see a statute thus enacting?

Therefore, the fair reasoning is, that they are declaratory of the common law. That, by our code, falsehood must be the evidence of the libel. If we apply to precedents, they are decidedly for us. In the case cited from 7 D. and E. this is admitted, for there it is allowed that the word false is contained in all the ancient forms. This, then, is a strong argument for saying that the falsity was, by the common law, considered a necessary ingredient. It is no answer to say that in declarations for assaults we use the words "sticks," "staves," etc. When instruments are named, this imports only one or the other which might be used; but when a word by way of epithet, that it means a precise idea, and we are to take it as if introduced for the purpose of explaining the crime. As to the practice on this occasion, we must take various epochs of the English history into consideration. At one time, that the law was as we have shown, is proved by the statutes.

At that time the truth was clearly drawn into question, and that since the period of Lord Raymond a different practice has prevailed, is no argument against the common law. The authority from the third institute is conclusive, at least satisfactory, to show that it was then necessary to show the words were true. *Et quid, etc., quæ litera in se continet nullum veritatem ideo, etc.* It is to be supposed that the truth in this case was not inquired into, when the want of it is the reason of the judgment. Unless this had been gone into, the court would not nor could not have spoken to it. The insertion of that, then, is a strong argument that this was the old law, and it shows us what that law was. In the case of the seven bishops, they were allowed to go into all the evidence they wanted. The court permitted them to read every thing to show it.

On that occasion Halloway and all agreed as to the admissibility of the truth. But this case is important in another view, as it shows the intent ought to be inquired into, for the bishops might have done it either with a seditious or an innocent motive. They declare that by the law they could not do the act required. They exculpated themselves by an appeal to their consciences. This shows the necessity of inquiring into the intent of the act.

In Rex *vs.* Fuller, this very atrocious offender was indicted for a most infamous libel, and yet Lord Holt at every breath asked him, Can you prove the truth? At the time, then, when this was done, there were some things in favor of the truth. It stands, then, a precedent for what we contend. I shall now

notice some intermediate authorities between that day and those in which a contrary principle has been endeavored to be supported. It is true that the doctrine originated in one of the most oppressive institutions that ever existed; in a court whose oppressions roused the people to demand its abolition, whose horrid judgments cannot be read without freezing the blood in one's veins. This is not used as declamation, but as argument. If doctrine tends to trample on the liberty of the press, and if we see it coming from a foul source, it is enough to warn us against polluting the stream of our own jurisprudence. It is not true that it was abolished merely for not using the intervention of juries, or because it proceeded *ex parte*, though that, God knows, would have been reason enough, or because its functions were discharged by the court of king's bench. It was because its decisions were cruel and tyrannical; because it bore down the liberties of the people, and inflictedthe most sanguinary punishments. It is impossible to read its sentences without feeling indignation against it. This will prove why there should not be a paramount tribunal to judge of these matters.

Want's case is the first we find on this subject; but even then we do not meet the broad definition of Lord Coke, in the case of *de famosis libellis*. I do not deny this doctrine of the immateriality of the truth as a universal negative to a publication's being libellous, though true. But still I do say, that in no case may you not show the intent; for, whether the truth be a justification will depend on the motives with which it was published.

Personal defects can be made public only to make a man disliked. Here, then, it will not be excused; it might, however, be given in evidence to show the libellous degree. Still, however, it is a subject of inquiry. There may be a fair and honest exposure. But if he uses the weapon of truth wantonly; if for the purpose of disturbing the peace of families; if for relating that which does not appertain to official conduct, so far we say the doctrine of our opponents is correct. If their expressions are, that libellers may be punished though the matter contained in the libel be true, in these I agree. I confess that the truth is not material as a broad proposition respecting libels. But that the truth cannot be material in any respect, is contrary to the nature of things. No tribunal, no codes, no systems can repeal or impair this law of God, for by his eternal laws it is inherent in the nature of things. We first find this large and broad position to the contrary in 5 Rep. And here it is to be noticed that when Lord Coke himself was in office, when he was attorney-general, and allowed to give his own opinion, he determines the truth to be material. But when he gets into that court, and on that bench, which had pronounced against it, when he occupies a star-chamber seat, then he declares it is immaterial. I do not mention this as derogating from Lord Coke, for, to be sure, he may be said to have yielded; but this, I say, is the first case on this point in which he seems to be of a contrary opinion. We do not, in every respect, contend even against his last ideas, we only assert that the truth may be given in evidence. But this we

allow is against the subsequent authorities, which, in this respect, overturn the former precedents. These latter, however, are contrary to the common law; to the principles of justice and of truth. The doctrine, that juries shall not judge on the whole matter of law and fact, or the intent and tendency of the publication, is not to be found in the cases before the time of Lord Raymond; and it is contrary to the spirit of our law, because it may prevent them from determining on what may, perhaps, be within their own knowledge. It was only by Lord Raymond that this was first set up and acted upon, and this has been followed by Lord Mansfield and his successors. Here, then, have been a series of precedents against us. Blackstone, too, says that the truth may not be given in evidence so as to justify; and so, with the qualifications I have before mentioned, do we. Prior, indeed, to his time, Lord Holt had laid down the law, in one or two cases, in conformity to that of the other side, and later times have given this a currency by a coincidence of precedents in its favor. A reflection may, perhaps, be here indulged, that, from what I have before remarked on Lord Coke, it is frequent for men to forget sound principles, and condemn the points for which they have contended. Of this, the very case of the seven bishops is an example, when those, who there maintained the principles for which we contend, supplanted the persons then in power, they were ready to go the whole length of the doctrine that the truth could not be given in evidence on a libel. This is an admonition that ought at all times to be at-

tended to; that at all times men are disposed to forward principles to support themselves. The authority of Paley had been adduced, if indeed he may be called an authority. That moral philosopher considers every thing as slanderous libels whether true or false, if published with motives of malice.

In these cases he does not consider the truth a justification. Nor do we; we do not say that it is, alone, always a justification of the act; and this we say, consistent with sound morality, is good law and good sense. On what ought a court to decide on such an occasion as this? Shall they be shackled by precedents, weakened in that very country where they were formed? Or rather, shall they not say, that we will trace the law up to its source? We consider, they might say, these precedents as only some extraneous bodies engrafted on the old trunk; and as such I believe they ought to be considered. I am inclined to think courts may go thus far, for it is absolutely essential to right and security that the truth should be admitted. To be sure, this may lead to the purposes suggested. But my reply is, that government is to be thus treated, if it furnish reasons for calumny. I affirm that, in the general course of things, the disclosure of truth is right and prudent, when liable to the checks I have been willing it should receive as an object of animadversion.

It cannot be dangerous to government, though it may work partial difficulties. If it be not allowed, they will stand liable to encroachments on their rights. It is evident that if you cannot apply this mitigated doctrine, for which I speak, to the cases

of libels here, you must forever remain ignorant of what your rulers do. I never can think this ought to be; I never did think the truth was a crime; I am glad the day is come in which it is to be decided, for my soul has ever abhorred the thought that a free man dared not speak the truth; I have forever rejoiced when this question has been brought forward.

I come now to examine the second branch of this inquiry—the different provinces of the court and the jury. I will introduce this subject by observing that the trial by jury has been considered, in the system of English jurisprudence, as the palladium of public and private liberty. In all the political disputes of that country, this has been deemed the barrier to secure the subjects from oppression. If, in that country, juries are to answer this end, if they are to protect from the weight of state prosecutions, they must have this power of judging of the intent, in order to perform their functions; they could not otherwise answer the ends of their institution. For, under this dangerous refinement of leaving them to decide only the fact of composing and publishing, any thing on which they may decide, may be made a libel. I do not deny the well-known maxim—that to matters of fact the jury, and to matters of law the judges, shall answer. I do not deny this, because it is not necessary, for the purpose of this or any other case, that it should be denied. I say, with this complicated explanation, I have before given of the manner in which the intent is necessarily interwoven in the fact, the court has the general cognizance of the law. In all cases of ancient

proceedings the question of law must have been presented.

It was in civil cases alone that an attaint would lie. They have, it is said, the power to decide in criminal cases, on the law and the fact. They have then the right, because they cannot be restricted in its exercise; and, in politics, power and right are equivalent. To prove it, what shall we say to this case? Suppose the Legislature to have laid a tax, which, by the Constitution, they certainly are entitled to impose, yet still the Legislature may be guilty of oppression; but who can prevent them, or say they have not authority to raise taxes? Legal power, then, is the decisive effect of certain acts without control. It is agreed that the jury may decide against the direction of the court, and that their verdict of acquittal cannot be impeached, but must have its effect. This, then, I take to be the criterion, that the Constitution has lodged the power with them, and they have the right to exercise it. For this I could cite authorities. It is nothing to say, in opposition to this, that they, if they act wrong, are to answer between God and their consciences. This may be said of the Legislature, and yet, nevertheless, they have the power and the right of taxation. I do not mean to admit that it would be proper for jurors thus to conduct themselves, but only to show that the jury do possess the legal right of determining on the law and the fact. What, then, do I conceive to be true doctrine? That in the general distribution of power in our Constitution, it is the province of the jury to speak to fact, yet, in

criminal cases, the consequences and tendency of acts, the law and the fact are always blended. As far as the safety of the citizen is concerned, it is necessary that the jury shall be permitted to speak to both. How, then, does the question stand? Certainly not without hazard; because, inasmuch as in the general distribution of power, the jury are to be confined to fact, they ought not wantonly to depart from the advice of the court; they ought to receive it, if there be not strong and valid reasons to the contrary; if there be, they should reject. To go beyond this is to go too far. Because, it is to say, when they are obliged to decide, by their oath, according to the evidence, they are bound to follow the words of the judge. After they are satisfied from him what the law is, they have a right to apply the definition. It is convenient that it should be so. If they are convinced that the law is as stated, let them pronounce him guilty; but never let them leave that guilt for the judge; because, if they do, the victim may be offered up, and the defendant gone. Will any one say, that under forms of law we may commit homicide? Will any directions from any judge excuse them? I am free to say, I would die on the rack, were I to sit as a juror, rather than confirm such a doctrine, by condemning the man I thought deserved to be acquitted; and yet I would respect the opinion of the judge, from which, however, I should deem myself at liberty to depart, and this I believe to be the theory of our law.

These are the propositions I shall endeavor to maintain. I have little more to do than examine

how far precedents accord with principles, and whether any establish a contrary doctrine. I do not know that it is necessary to do more than has already been done by my associate counsel, and yet, perhaps, I should not complete my duty without adverting to what has fallen, on this point, from our opponents. There is not one of the ancient precedents in which our doctrine has not in general prevailed, and it is, indeed, to be traced down to one of a modern date. The case of the seven bishops is that to which I allude. There it was permitted to go into the truth, and all the court submitted the question to the jury. This case deserves particular attention. If, on the one hand, it was decided at a time when the nation was considerably agitated, it was, on the other hand, at a time when great constitutional precedents and points were discussed and resolved. The great one was, the power of the jury; and this power was submitted to, to extricate the people, for the salvation of the nation, from the tyranny with which they were then oppressed. This was one of the reasons which brought about their glorious revolution, and which, perhaps, tended to the maturing those principles which have given us ours. This ought to be considered as a landmark to our liberties, as a pillar which points out to us on what the principles of our liberty ought to rest; particularly so if we examine it as to its nature, and the nature of the attempts then made to set up and support the endeavors to construe an act of duty a libel—a deed in which conscience did not permit those reverend characters to act in any other way than what they did, a respect

to which they held a bounden duty. It is a precedent then on which we should in every way fasten ourselves. The case of Fuller is of minor importance. Yet that is one in which Lord Holt called on the defendant to enter into the truth. In the King *vs.* Tutchin, Lord Holt expressly tells the jury, You are to consider whether the tendency of this writing be not to criminate the administration; you, the jury are to decide on this. Owen's case is to the same effect. There Lord Camden was of counsel, and in the discussion, in the House of Lords, he tells us, and surely his testimony is good, that being of counsel for the defendant, he was permitted to urge to the jury a cognizance of the whole matter of libel; that in the case of Shepherd, where, by his official situation, he was called on to prosecute for the Crown, where the interests of government called on him to maintain an opposite doctrine, yet then he insisted for a verdict on the whole matter, from the consideration of the jury. In the King *vs.* Horne, Lord Mansfield himself tells the jury they have a right to exercise their judgment from the nature of the intent. This surely, then, is a precedent down to a late period. It is not, however, to be denied, that there is a series of precedents on the other side. But as far as precedents of this kind can be supported, they can rest on precedents alone, for the fundamental rights of juries show, that as by their power they can affect a question of this nature, so, politically speaking, they have the right. To ascertain this, it is necessary to inquire, whether this law, now contended for, uniformly and invariably formed

the practice of all the judges in Westminster Hall. For, if so, then an argument may, with more propriety, be raised; but if it was disputed, then it is to be doubted. Precedents ought to be such as are universally acknowledged, and this, if we are to credit the highest authority, was not the invariable practice. Lord Loughborough says, that his practice was the other way. He declares that he invariably left the whole to the jury; and Lord Camden gives us to understand the same thing. Here, then, is proof that it was not universally acquiesced in, and this, by some of the most respected characters that ever sat on a bench.

Can we call this a settled practice—a practice which is contradicted by other precedents? Have they not varied? I consider nothing but a uniform course of precedents, so established that the judges invariably conform to it in their judicial conduct, as forming a precedent. When this is not the case, we must examine the precedent, and see how far it is conformable to principles of general law. If, then, they have not that character of uniformity, which gives force to precedents, they are not to be regarded, for they are too much opposed to fundamental principles. The court may, therefore, disregard them, and say the law was never thus settled. It was a mere floating of litigated questions. Different conduct was pursued by different men, and, therefore, the court is at liberty to examine the propriety of all; and if it be convenient that a contrary mode should be adopted, we ought to examine into what has been done, for we have a right so to do, and it is

our sacred duty. When we pass from this to the declaratory law of Great Britain, the whole argument is enforced by one of the first authorities. I do not consider it as binding, but as an evidence of the common law. If so, I see not why we may not now hold it as evidence of another evidence, that the law had not been settled by a regular course of judicial precedents. In all the debates on this question, it is denied to have been so settled. It must then be confessed that it was so; the law was one thing, and the practice another; that to put it out of doubt was the end and object of Mr. Fox's bill. Therefore it is in evidence that the law was not settled in that country. I notice another fact, or historical evidence of this; it is what was mentioned by Lord Lansdowne, in the very debates to which I have before alluded. It is, that twenty years before, a similar act was brought forward and dropped. Here then is a matter of fact to show that, in the consideration of that nation, the doctrines of Lord Mansfield were never palatable nor settled, and that the opinions of judges and lawyers were considered by many as not the law of the land. Let it be recollected, too, that with that nation the administration of justice in the last resort is in the House of Lords. That being so it gives extreme weight to a declaratory act, as it shows the sense of the highest branch of the judicature of that country. It is in evidence that what we contend for was and had been the law, and never was otherwise settled. It is a very honorable thing to that country, in a case where party passions had been excited to a very great height, to

see that all united to bring it in. It was first introduced by Mr. Fox; the principal officers of the crown acquiesced; the Prime-Minister gave it his support, and in this they were aided by many of the great law lords. All parties concurred in declaring the principles of that act to be the law, and not only does the form prove it to be declaratory, but when the court read the debates on that subject they will see this to be the fact. Adding the word "enacted" to a bill does not vary the conclusion of its being declaratory. The word "enacted" is commonly superadded, but the word "declared" is never used but when it is intended that the act shall be considered as declaratory; and when they insert the word "declare" it is because they deem it important that it should be so understood. This I deem conclusive evidence of the intent. Thus also it was understood by all the judges except Lord Kenyon, and he does not say that it was not declaratory. To be sure he makes use of some expressions that look that way, such as, "that the act had varied the old law." But not one word to show that it was not intended by Parliament to be a declaratory law. But it would not be surprising that Lord Kenyon, who opposed the passage of the act, should, in a judicial decision, still adhere to his old ideas. This, however, does not affect the evidence which arises from the words of the act. I join in issue, then, whether this be sufficient evidence to the court. For I contend, that notwithstanding the authority of Lord Kenyon and the cases on the other side, the conclusions they maintain would be unfair. For if these conclusions

necessarily tend to the subversion of fundamental principles, though they be warranted by precedents, still the precedents ought not to weigh. But should they have settled the law by their precedents, still this court will admit any evidence to show that the facts are otherwise, and the law never was as they have settled it. In this case, then, I say, as matters of evidence, these precedents shall not prevail and shall not have any effect. In practice on this declaratory act they have gone into a construction important to our argument. But previously to entering into this I shall make one observation to show the nature of this act to be declaratory; the recital states it to be so.

Spencer, Attorney-General—The whole matter in issue are the words.

Hamilton—Is it to be doubted that every general issue includes law and fact? Not a case in our criminal code in which it is otherwise. The construction, the publication, the meaning of the innuendoes, the intent and design, are all involved in the question of libel, and to be decided on the plea of not guilty, which puts the whole matter in issue. It is, therefore, a subtlety to say that the fact and law are not in issue. There can be no distinction taken, even by judges, between libels and other points. But will it be said, that when this question was before the Parliament, whether the law and the fact should be in issue, that the Parliament did not mean to give the power to decide on both? It is a mere cavil to say that the act did not mean to decide on this very point. The opposition of the twelve

judges has been much insisted on. But in my opinion they have given up the point as to the right of the jury to decide on the intent. They in some part of their answer assert the exclusive power of the court; they deny in terms the power of the jury to decide on the whole. But when pressed on this point as to a letter of a treasonable nature, how do they conclude? Why, the very reverse of all this. Here, then, we see the hardship into which the best of men are driven, when compelled to support a paradox. Can the jury do it with power, and without right? When we say of any forum that it can do and may hazard the doing a thing, we admit the legal power to do it. What is meant by the word "hazard"? If they choose to do it, they have then the legal right; for legal power includes the legal right. This is really only a question of words. But in the exercise of this right, moral ideas are no doubt to restrain; for the conscience ought to decide between the charge and the evidence which ought to prevail, one side or the other. The moment, however, that question as to the power is admitted, the whole argument is given up. I consider the judges driven to yield up, at the conclusion of their opinion, that point for which they had in the former parts contended. Thus, then, stands the matter, on English conduct, and on English precedent. Let us see if any thing in the annals of America will further the argument. Zenger's case has been mentioned as an authority. A decision in a factitious period, and reprobated at the very time.

A single precedent never forms the law. If in

England it was fluctuating in an English court, can a colonial judge, of a remote colony, ever settle it? He cannot fix in New York what was not fixed in Great Britain. It was merely one more precedent to a certain course of practice. But because a colonial governor, exercising judicial power, subordinate to the judges of the mother country, decides in this way, can it be said that he can establish the law, and that he has, by a solitary precedent, fixed what his superior could not? The most solemn decisions of the court of king's bench are at one time made and at another time overruled. Why are our courts to be bound down by the weight of only one precedent? Is a precedent, like the laws of the Medes and Persians, never to be changed? This is to make the colonial precedent of more weight than is in England allowed to a precedent of Westminster Hall. To pursue the precedents more emphatically our own, let us advert to the sedition law, branded indeed with epithets the most odious, but which will one day be pronounced a valuable feature in our national character. In this we find not only the intent but the truth may be submitted to the jury, and that even in a justificatory manner. This, I affirm, was on common-law principles. It would, however, be a long detail to investigate the applicability of the common law to the Constitution of the United States. It is evident, however, that parts of it use a language which refers to former principles. The *habeas corpus* is mentioned, and as treason, it adopts the very words of the common law. Not even the Legislature of the Union can change it.

Congress itself cannot make constructive or new treasons. Such is the general tenor of the Constitution of the United States, that it evidently looks to antecedent law. What is, on this point, the great body of the common law? Natural law and natural reason applied to the purposes of society. What are the English courts now doing but adopting natural law?

What have the court done here? Applied moral law to constitutional principles, and thus the judges have confirmed this construction of the common law; and therefore, I say, by our Constitution it is said the truth may be given in evidence. In vain it is to be replied that some committee met, and in their report gave it the name of amendment. For when the act says declared, I say the highest legislative bodies in this country have declared that the common law is, that the truth shall be given in evidence; and this I urge as a proof of what that common law is. On this point a fatal doctrine would be introduced if we were to deny the common law to be in force according to our federal Constitution. Some circumstances have doubtless weakened my position. Impeachments of an extraordinary nature have echoed through the land, charging as crimes things unknown, and although our judges, according to that Constitution, must appeal to the definitions of the common law for treasons, crimes, and misdemeanors, this, no doubt, was that no vague words might be used. If, then, we discharge all evidence of the common law, they may be pronounced guilty *ad libitum*, and the crime and offence being at once

their will, there would be an end of that Constitution.

By analogy a similar construction may be made of our own Constitution, and our judges thus got rid of. This may be of the most dangerous consequences. It admonishes us to use with caution these arguments against the common law; to take care how we throw down this barrier which may secure the men we have placed in power; to guard against a spirit of faction, that great bane to our community, that mortal poison to our land. It is considered by all great men as the natural disease of our form of government, and therefore we ought to be careful to restrain that spirit. We have been careful that when one party comes in it shall not be able to break down and bear away the others. If this be not so, in vain have we made constitutions; for if it be not so, then we must go into anarchy, and from thence to despotism and to a master. Against this I know there is an almost insurmountable obstacle in the spirit of the people. They would not submit to be thus enslaved. Every tongue, every arm would be uplifted against it; they would resist, and resist, and resist, till they hurled from their seats those who dared make the attempt. To watch the progress of such endeavors is the office of a free press—to give us early alarm, and put us on our guard against the encroachments of power. This, then, is a right of the utmost importance; one for which, instead of yielding it up, we ought rather to spill our blood. Going on, however, to precedents, I find another in the words of Chief-Justice Jay, when pronouncing the

law on this subject. The jury are, in the passage already cited, told the law, and the fact is for their determination; I find him telling them that it is their right. This admits of no qualification. The little, miserable conduct of the judge in Zenger's case, when set against this, will kick the beam; and it will be seen that even the twelve judges do not set up, with deference, however, to their known ability, that system now insisted on. If the doctrine for which we contend is true in regard to treason and murder, it is equally true in respect to libel. For there is the great danger. Never can tyranny be introduced into this country by arms; these can never get rid of a popular spirit of inquiry; the only way to crush it down is by a servile tribunal. It is only by the abuse of the forms of justice that we can be enslaved. An army never can do it. For ages it can never be attempted. The spirit of the country, with arms in their hands, and disciplined as a militia, would render it impossible. Every pretence that liberty can be thus invaded is idle declamation. It is not to be endangered by a few thousand of miserable, pitiful military. It is not thus that the liberty of this country is to be destroyed. It is to be subverted only by a pretence of adhering to all the forms of law, and yet by breaking down the substance of our liberties; by devoting a wretched but honest man as the victim of a nominal trial. It is not by murder, by an open and public execution that he would be taken off. The sight of this, of a fellow-citizen's blood, would at first beget sympathy; this would rouse into action, and the

people, in the madness of their revenge, would break, on the heads of their oppressors, the chains they had destined for others.

One argument was stated to the court of a most technical and precise kind. It was that which relates to putting on the record a part only of the libel. That on this, no writ of error would lie. What was the answer given? That it could not be presumed judges could be so unjust. Why, it requires neither prejudice nor injustice, it may be matter of opinion. The argument goes to assert that we are to take for granted the infallibility of our judges. The court must see that some better reason must be given, that it must be shown that this consequence cannot ensue. If not, it is decisive against the argument. Surely this question deserves a further investigation. Very truly and righteously was it once the intention of the attorney-general that the truth should have been given in evidence. It is desirable that there should be judicial grounds to send it back again to a jury. For surely it is not an immaterial thing that a high official character should be capable of saying any thing against the father of this country.

It is important to have it known to the men of our country, to us all, whether it be true or false; it is important to the reputation of him against whom the charge is made, that it should be examined. It will be a glorious triumph for truth; it will be happy to give it a fair chance of being brought forward; an opportunity, in case of another course of things, to say that the truth stands a chance of being the criterion of justice. Notwithstanding, however, the con-

trary is asserted to be the doctrine of the English courts, I am, I confess, happy to hear that the freedom of the English is allowed; that a nation with king, lords, and commons, can be free. I do not mean to enter into a comparison between the freedom of the two countries. But the attorney-general has taken vast pains to celebrate Lord Mansfield's character. Never, till now, did I hear that his reputation was high in republican estimation; never, till now, did I consider him as a model for republican imitation. I do not mean, however, to detract from the fame of that truly great man, but only conceived his sentiments were not those fit for a republic. No man more truly reveres his exalted fame than myself; if he had his faults, he had his virtues; and I would not only tread lightly on his ashes, but drop a tear as I passed by. He, indeed, seems to have been the parent of the doctrines of the other side. Such, however, we trust, will be proved not to be the doctrines of the common law nor of this country, and that in proof of this, a new trial will be granted.

FRAGMENT ON THE FRENCH REVOLUTION [1]

Facts, numerous and unequivocal, demonstrate that the present ÆRA is among the most extraordinary which have occurred in the history of human

[1] This fragment, now first printed, from the Hamilton MSS., vol. xv., p. 117, has no date, but is of interest as showing the effect produced upon his mind by the French Revolution, and why that great convulsion so affected and colored the views of the Federalists and of the more conservative classes of every community.

affairs. Opinions, for a long time, have been gradually gaining ground, which threaten the foundations of religion, morality, and society. An attack was first made upon the Christian revelation, for which natural religion was offered as the substitute. The Gospel was to be discarded as a gross imposture, but the being and attributes of GOD, the obligations of piety, even the doctrine of a future state of rewards and punishments, were to be retained and cherished.

In proportion as success has appeared to attend the plan, a bolder project has been unfolded. The very existence of a Deity has been questioned and in some instances denied. The duty of piety has been ridiculed, the perishable nature of man asserted, and his hopes bounded to the short span of his earthly state. DEATH has been proclaimed an ETERNAL SLEEP; "the dogma of the *immortality* of the soul a *cheat*, invented to torment the living for the benefit of the dead." Irreligion, no longer confined to the closets of conceited sophists, nor to the haunts of wealthy riot, has more or less displayed its hideous front among all classes.

Wise and good men took a lead in delineating the odious character of despotism, in exhibiting the advantages of a moderate and well-balanced government, in inviting nations to contend for the enjoyment of national liberty. Fanatics in political science have since exaggerated and perverted their doctrines. Theories of government unsuited to the nature of man, miscalculating the force of his passions, disregarding the lessons of experimental wisdom, have been projected and recommended. These

have everywhere attracted sectaries, and everywhere the fabric of government has been in different degrees undermined.

A league has at length been cemented between the apostles and disciples of irreligion and of anarchy. Religion and government have both been stigmatized as abuses; as unwarrantable restraints upon the freedom of man; as causes of the corruption of his nature, intrinsically good; as sources of an artificial and false morality which tyrannically robs him of the enjoyments for which his passions fit him; and as clogs upon his progress to the perfection for which he was destined.

As a corollary from these premises, it is a favorite tenet of the sect that religious opinion of any sort is unnecessary to society; that the maxims of a genuine morality and the authority of the magistracy and the laws are a sufficient and ought to be the only security for civil rights and private happiness.

As another corollary, it is occasionally maintained by the same sect that but a small portion of power is requisite to government; that even this portion is only temporarily necessary, in consequence of the bad habits which have been produced by the errors of ancient systems; and that as human nature shall refine and ameliorate by the operation of a more enlightened plan, government itself will become useless, and society will subsist and flourish free from shackles.

If all the votaries of this new philosophy do not go the whole length of its frantic creed, they all go far enough to endanger the full extent of the mischiefs

which are inherent in so wild and fatal a scheme, every modification of which aims a mortal blow at the vitals of human happiness.

The practical development of this pernicious system has been seen in France. It has served as an engine to subvert all her ancient institutions, civil and religious, with all the checks that served to mitigate the rigor of authority; it has hurried her headlong through a rapid succession of dreadful revolutions, which have laid waste property, made havoc among the arts, overthrown cities, desolated provinces, unpeopled regions, crimsoned her soil with blood, and deluged it in crime, poverty, and wretchedness; and all this as yet for no better purpose than to erect on the ruins of former things a despotism unlimited and uncontrolled; leaving to a deluded, an abused, a plundered, a scourged, and an oppressed people, not even the shadow of liberty to console them for a long train of substantial misfortunes, of bitter suffering.

This horrid system seemed awhile to threaten the subversion of civilized society and the introduction of general disorder among mankind. And though the frightful evils which have been its first and only fruits have given a check to its progress, it is to be feared that the poison has spread too widely and penetrated too deeply to be as yet eradicated. Its activity has indeed been suspended, but the elements remain, concocting for new eruptions as occasion shall permit. It is greatly to be apprehended that mankind is not near the end of the misfortunes which it is calculated to produce, and that it still portends

a long train of convulsion, revolution, carnage, devastation, and misery.

Symptoms of the too great prevalence of this system in the United States are alarmingly visible. It was by its influence that efforts were made to embark this country in a common cause with France in the early period of the present war; to induce our government to sanction and promote her odious principles and views with the blood and treasure of our citizens. It is by its influence that every succeeding revolution has been approved or excused; all the horrors that have been committed justified or extenuated; that even the last usurpation, which contradicts all the ostensible principles of the Revolution, has been regarded with complacency, and the despotic constitution engendered by it slyly held up as a model not unworthy of our imitation.

In the progress of this system, impiety and infidelity have advanced with gigantic strides. Prodigious crimes heretofore unknown among us are seen. The chief and idol of * * * [The rest is wanting.]

DEFENCE OF THE FUNDING SYSTEM[1]

The second feature of the plan as stated was to *fund* the entire debt, *foreign* and *domestic*, *original* and *assumed*.

[1] This paper and the one which follows are from the Hamilton MSS. in Washington, now printed here for the first time. They were not discovered in season for the volume on Taxation and Finance, where they belong, and are therefore added here to the miscellaneous papers. They are unfinished and incomplete, and the originals have marginal

The funding of the debt has been unnecessarily the theme of much declamation and invective. A confusion of ideas has been attempted to be produced among the ignorant. The *funding* with the *assumption* has been sometimes treated as the creation of the debt; at others the funding has been represented as its *perpetuation*, and as a direct attempt to fasten the burthen irrevocably about the necks of the people. A particular ingredient in the plan proposed—the rendering the debt redeemable only in certain proportions—has been pressed to reinforce this argument and to prove the iniquitous tendency of the plan. The circumstance of qualified redeemability will be spoken of hereafter. Remarks here will be confined to the mere *funding* of the debt.

The Revolution, which gave us independence and secured us liberty, left upon the country as the price of it a considerable debt, partly contracted by

notes of points to be investigated. They are numbered 9 and 10 respectively but I have printed them in an inverse order because it seems to preserve the logical sequence of thought and subject better than the numerical arrangement. These two papers have no date, and there is no trace of any preceding numbers. It is possible that they were intended as part of the unfinished "Vindication of the Funding System" (Vol. iii., p. 1), but they are conceived on a much more elaborate and extensive plan, and while the "Vindication" belongs to the year 1791, these papers are clearly later than 1795, when Hamilton retired from office. Unfinished and unrevised as they are, these essays are to be ranked among the most remarkable of Hamilton's financial papers. The second one is of especial interest, because it contains an exhaustive defence of the assumption measures—the most contested portion of Hamilton's financial policy, and upon which his arguments and opinions in all their extent have never before been thoroughly known. The discovery of these papers, in a word, has made an important addition to Hamilton's writings on finance, the subject in which above all others he was a master.

the United States in their joint capacity, partly by the individual States in their separate capacities.

What was to be done with the debt? Was it to be wiped off with a sponge or was it to be provided for?

The first idea was the extreme of political profligacy and folly. Governments like individuals have burthens which ought to be deemed sacred, else they become mere engines of violence, oppression, extortion, and misery. Adieu to the security of property, adieu to the security of liberty! Nothing is then safe.

All our favorite notions of natural and constitutional right vanish. Every thing is brought to a question of power. Right is anathematized, excommunicated, and banished.

In the code of moral and political obligations, that of paying debts holds a prominent place. Tried by the test of utility, there is perhaps none of greater force or extent. Without it, no borrowing or lending, no selling or purchasing upon time; no credit, private or public; consequently a more cramped and less prosperous agriculture, fewer and more imperfect mechanic and other industrial arts; less and more embarrassed commerce; an immense contraction of national resource and strength. A most active power in the whole scheme of national happiness would be destroyed. A vast void would be created. Every thing would languish and wither.

No one will be hardy enough directly to dispute these positions or advocate the horrid doctrine of applying the sponge, but it was seen to lurk beneath some very insidious suggestions, often reiterated and urged with earnestness and exaggeration.

The debt had a great deal of alloy in it. A great part of it had been produced for no adequate value. To pay it, therefore, involved injustice and injury to the public.

The real state of the fact which is the basis of this suggestion shall be discussed in another place. Here it shall be taken for granted that it was well founded.

But what were the causes? The bad arrangement and delinquencies of government itself; the infidelity of its own agents; the enhancement of price from the demand and scarcity incident to a long and exhausting war; the embarrassments and risks to individuals from a depreciating currency; the eventual hazards inseparable from a state of revolution. These were the essential causes of the alloy, if any, in the debt.

Was any one or all of them a good plea to the government not to pay? Was it just that the whole debt should be cancelled because a fifteenth, or a tenth, or a fifth of it had been contracted without adequate consideration? Was it equitable that those persons who had yielded their personal services, lent their money, and parted with their property to the government, upon fair and reasonable compensation and values, should lose their rights because others may have extorted or imposed; because the disorders in the public arrangements had prevented proper liquidations of accounts and had let in unfounded claims; because the infidelity of the government's own agents had produced dilapidations and had emitted evidences of debt without value or for little value? Was it reasonable to ob-

ject to compensations and allowances predicated upon a state of war, revolution, disorder, and hazard, because they were not agreeable to a standard adjusted to a state of peace, established government credit, and safety? An individual may plead duress and compulsion as an objection to the performance of his engagements; but this is impossible to a government. Individuals cannot exercise over it that species of control which may be demonstrated as compulsion. It may oppress, but it cannot be oppressed. Circumstances which, according to the laws, enable individuals to demand high prices for their property are never arguments of compulsion to vitiate the contract.

Where would an objection of this kind lead? War, insurrection, every great disturbance of the social order is apt to augment price. Is there constantly on the return of peace and order to be a revision and reliquidation or a rejection of the contracts? How long would governments under such a system obtain any success but by exactions and violence in similar emergencies?

It is plain that such an objection ought to be discarded as a contemptible and pernicious subterfuge. It was in the view both of justice and policy indispensable to provide fairly for the debt. 'T is afflicting that there should be a state of public opinion or feeling, however limited, which should encourage a man to dare to expect to give currency to a contrary insinuation, or to throw any degree of unpopularity upon a fair provision for the debt.

Another weapon indirectly used against a pro-

vision for the debt was the fact of alienations of it at low values.

But how could this supersede the obligation of the government to pay or provide? The government had received the benefit of the services, loans, or supplies which were the consideration of its contracts. These contracts were in their constitution alienable and assignable. The proprietors had a full right to part with them at any value they pleased, or even to give them away. What was it to the government how they disposed of them? By what rule of reason, law, or right was the government dispensed, by alienations, provident or improvident, of the original proprietors, from paying its debts and performing its engagements?

It is evident that the only colorable question which could be raised was not whether the debt should be provided for, but for whose benefit the provision should accrue—that of the original proprietors or of their alienees—a question which will be examined in another place.

The obligation to provide for the debts of the benefit of those who were best entitled was indisputable. No argument can enforce it; no man who has the least regard for his reputation will hazard a denial of it.

But the anonymous publications have, by insinuations, attempted to raise doubts and prejudices. Not the mode merely of providing has been attacked, but by implication any provision whatever. The debt itself has been sometimes treated as a nuisance, as a morbid excrescence on the body politic, as the

creature of a wicked combination to create a monied aristocracy and undermine the republican system. A debt created by that very revolution which gave us the republican system has been artfully presented in these odious colors to the dislikes of a spirit of jealousy and avarice, and those who were disposed to uphold the integrity and credit of the nation have been exhibited as conspirators against democratic principles. It is afflicting that there should be a state of public information, opinion, or feeling which should encourage any man to attempt to traffic for popularity by means so absurd and so base as these. If they could succeed we must renounce those pretensions to intelligence and light as a people which we claim hitherto on such just grounds; we must soon after renounce that republican system of which these men affect to be so fond.

The plainest maxims of common sense and common honesty establish that our government had no option but to make a fair provision for the debt. Justice, true policy, character, credit, interest, all spoke on this head a uniform and unequivocal language. Not to have listened to it would have been to have prostrated every thing respectable among nations. It would have been an act of suicide in the government at the very commencement of its existence. It would not have strangled the serpents which threatened, but it would have strangled itself.

The only possible question was about the nature of the provision. And to this point indeed were confined all the questions formally raised, though indirectly it has been endeavored to excite prejudices

in the public mind against the debt itself, and consequently against all provision for it.

But among the questions raised as to the nature of the provision, I neither recollect nor can trace that among the legislative parties, while the subject was under discussion, there was any party against the principle of *funding* the debt as contradistinguished from other modes of providing.

Indeed, but three options occurred: to pay off the principal and interest at once, which was impossible; to provide annually for the interest and occasionally for reimbursing as much of the principal as the public resources permitted; to *fund* the debt, or, in other words, to *pledge* specified and adequate funds for the regular payment of interest till the principal was reimbursed, and, as an auxiliary measure, to constitute and pledge adequate funds for the reimbursement of the principal.

The last was conformable to the sense of America repeatedly and solemnly expressed. Different acts of Congress under the old Confederation embrace and enforce the propriety of this measure, and frequently with unanimity. The States separately had all sanctioned it. The objectors were a few solitary individuals, neither numerous nor significant enough by weight of talents or character to form a party.

In proposing, therefore, to fund the debt, I considered myself not only as pursuing the true principles of credit and the true policy of the case, but the uniform general sense of the Union.

I had heard no lisp from any description of men in the national legislature of an objection to this idea,

and accordingly when the plan proposed was under discussion there appeared none in opposition to it.

The clamors therefore which have been subsequently raised on this head and patronized more or less directly by a whole party are not less strong indications of the disingenuousness of party spirit than of an immaturity of ideas on the subject of public credit.

The substance of the argument against the funding systems is that by facilitating credit they encourage to enterprises which produce expense; by furnishing in credit a substitute for revenue, they prevent the raising contemporarily with the causes of expense as much as might be raised to avoid the unpopularity of laying new taxes, and in both ways occasion a tendency to run in debt, consequently a progressive accumulation of debt and its perpetuation—at least till it is crushed beneath the load of its own enormous weight.

An analysis of this argument proves that it turns upon the abuses of a thing intrinsically good.

A prosperous state of agriculture, commerce, and manufactures nourishes and begets opulence, resource, and strength. These, by inspiring a consciousness of power, never fail to beget in the councils of nations, under whatever form of government, pride, ambition, and a sentiment of superiority. These dispositions lead directly to war, and consequently to expense and to all the calamities which march in the train of war. Shall we, therefore, reprobate and reject improvements in agriculture, commerce, and manufactures?

Again the same causes leading to opulence, increasing the means of enjoyment, naturally sharpen the appetite for it, and so promote luxury, extravagance, dissipation, effeminacy, disorders in the moral and political system, convulsions, revolutions, the overthrow of nations and empires. Shall we, therefore, on this account renounce improvements in agriculture, commerce and manufactures?

Again, science, learning, and knowledge promote those momentous discoveries and improvements which accelerate the progress of labor and industry, and with it the accumulation of that opulence which is the parent of so many pleasures and pains, so many blessings and calamities. Shall we, therefore, on this account explode science, learning, and knowledge?

Again, true liberty, by protecting the exertions of talents and industry, and securing to them their justly acquired fruits, tends more powerfully than any other cause to augment the mass of national wealth and to produce the mischiefs of opulence. Shall we, therefore, on this account proscribe liberty also?

What good, in fine, shall we retain? 'T is the portion of man, assigned to him by the eternal allotment of Providence that every good he enjoys shall be alloyed with ills, that every source of his bliss shall be a source of his affliction—except virtue alone, the only unmixed good which is permitted to his temporal condition.

But shall we on this account forego any advantage which we are fitted to enjoy? Shall we put in prac-

tice the horrid system of the detestable Robespierre? Shall we make war upon science and its professors? Shall we destroy the arts useful as well as pleasurable? Shall we make knowledge a crime, ignorance a gratification? Shall we lay in ruins our towns and deform the face of our fields? Shall we enchain the human mind and blunt all its energies under the withering influences of privation and the benumbing strokes of terror? Shall we substitute the unmingled misery of a gloomy and destructive despotism to the alternate sunshine and storms of liberty?

The very objection to funding systems makes their panegyric. "*They facilitate credit*"; they give energy, solidity, and extent to the credit of a nation; they enable it in great and dangerous emergencies to obtain readily and copiously the supplies of money of which it stands in need for its defence, safety, and the preservation or advancement of its interests. They enable it to do this, too, without crushing the people beneath the weight of intolerable taxes; without taking from industry the resources necessary for its vigorous prosecution; without emptying all the property of individuals into the public lap; without subverting the foundation of social order.

Indeed, war, in the modern system of it, offers but two options—credit or the devastation of private property. 'T is impossible merely with that portion of the income of the community which can be spared from the wants, conveniences, and industrious pursuits of individuals to face the expenses of a serious war during its progress.

There must be anticipation by credit, or there must

be a violent usurpation of private property. The state must trench upon the capital instead of the revenue of the people, and thus every war would involve a temporary ruin.

'T is the signal merit of a vigorous system of national credit, that it enables a government to support war without violating property, destroying industry, or interfering unreasonably with individual enjoyments. The citizens retain their capital to carry on their several businesses and a due proportion of its produce for obtaining their usual comforts. Agriculture, commerce, and manufactures may receive some check, but they receive no serious wound; their stamina remain, and, on peace returning, they quickly resume their wonted elasticity.

War, by the use of credit, becomes less a scourge and loses a great portion of its sting.

Will it be said that *equal* credit may be established without funding systems? Then I answer the objection made to those systems will apply to that mode whatever it is by which this equal credit is obtained. 'T is credit which, giving extraordinary resources to government encourages to enterprises that produce expense, and which, furnishing a substitute for revenue, relaxes the efforts of taxation, and prevents the raising for the current expenditure as much as might be raised in this way. However that credit is acquired the same consequences follow —the same evils ensue.

Will it be said that without funding systems not an *equal* but a *competent* credit might be secured? I answer by asking what is this competent credit? Is

it the power of obtaining by loans all that the state may want for extraordinary exigencies, more than it can conveniently and without oppression or disorder raise on the citizens? If any thing less it is plainly not enough, and if it is this it is as much as funding systems effect. The how much in each case to be obtained in loans beyond what can be conveniently raised in taxes depends on the pressure of the occasion and the opinion of the legislature of the day. And this opinion will be affected by the temper of the times—the degree of popular favor or disfavor towards the object of expense and the genius of the government. A credit is not good which does not extend the power of the government to borrow to the utmost limit of the power of individuals to lend.

Thus it appears that the great objection to funding systems resolves itself into an objection to credit in the abstract, and if listened to drives us to the alternative of a mean surrender of our rights and interests to every enterprising invader, or to the oppression of the citizens and destruction of capital and industry in every war in which we should be engaged, and in the end from the insupportableness of that situation to the same surrender of our rights and interests.

Indeed as far as it is the attribute of funding systems to invigorate credit, it is their tendency in an important particular to diminish debt. This relates to the lower or higher rate of interest at which money is borrowed according to the state of credit. A government which borrows 100 dollars at three per cent. owes in fact a less debt than a government

which is obliged to borrow the same sum at five per cent. Interest is always a part of the debt, and it is self-evident that the ultimate discharge of one which bears five per cent. will exhaust more money or income than that of one which only bears three per cent. This principle runs through all the public operations in which credit is concerned, and the difference in the result of the public expenditures, and consequently its debts, from a perfect or an imperfect state of credit, is immense.

Every state ought to aim at rendering its credit—that is, its ability to borrow—commensurate with the utmost extent of the lending faculties of the community and of all others who can have access to its loans. 'T is then that it puts itself in a condition to exercise the greatest portion of strength of which it is capable, and has its destiny most completely in its own hands. 'T is then that it is able to supply all its wants, not only in the most effectual manner, but at the cheapest rate. 'T is then that the various departments of its industry are liable to the least disturbance and proceed with the most steady and vigorous motion. An ignorance which benights the political world and disputes the first principles of administration is requisite to bring this position for a moment into question. The principle on which such a question could be founded would equally combat every institution that promotes the perfection of the social organization; for this perfection in all its shapes, by giving a consciousness of strength and resource and inspiring pride, tends to ambitious pursuits, to war, expense, and debt.

On this question, as on most others, evils are traced to a wrong source. Funding systems, as the engines of credit, are blamed for the wars, expenses, and debts of nations. Do these evils prevail less in countries where either those systems do not exist or where they exist partially and imperfectly? Great Britain is the country where they exist in most energy. Her wars have no doubt been frequent, her expenses great, and her debts are vast. But is not this, with due allowance for difference of circumstances, the description of all the great powers of Europe—France, Spain, Austria, Russia, Prussia? Are they not as frequently at war as Great Britain, and as often of their own choice? Have not their expenses compared with their means and the state of society been as great? Have they not all, except Prussia, heavy debts?

The debt of France brought about her revolution. Financial embarrassments led to those steps which led to the overthrow of the government and to all the terrible scenes which have followed.

Let us then say, as the truth is, not that funding systems produce wars, expenses, and debts, but that the ambition, avarice, revenge, and injustice of man produce them. The seeds of war are sown thickly in the human breast. It is astonishing, after the experience of its having deluged the world with calamities for so many ages, with how great precipitancy and levity nations still rush to arms against each other.

Besides what we see abroad, what have we recently witnessed among ourselves? Never was a

thing more manifest than that our true policy lay in cultivating peace with scrupulous care. Never had a nation a stronger interest. Yet how many were there who directly, and indirectly raised and joined in the cry of war. Sympathy with one nation and animosity against another, made it infinitely difficult for the government to steer a course calculated to avoid our being implicated in the volcano, which shook and overwhelmed Europe. Vague speculations about the cause of liberty seconded by angry passions, had like to have plunged this young country, just recovering from the effects of the long and desolating war, which confirmed its revolution, just emerging from a state little short of anarchy; just beginning to establish system and order, to revive credit and confidence, into an abyss of war, confusion, and distress!

After all the experience, which has been had upon the point, shall we still charge upon funding systems evils which are truly chargeable upon the bad and turbulent passions of the human mind?

Peruse the history of Europe from its earliest period, were wars less frequent or pernicious before the system of credit was introduced than they have been since? They were more frequent and more destructive though perhaps not of as long duration at one time.

But they did not equally produce debt. This is true, yet it remains to compare the evils of debt with those which resulted from the antecedent system of war—the devastations and extortions, the oppressions, and derangements of industry in all its

branches; and it remains to consider whether expedients may not be devised, which may secure to nations the advantages of credit and avoid essentially its evils. If this shall be practicable, the argument in favor of the system of credit has no counterpoise and becomes altogether conclusive.

Credit may be called a new power in the mechanism of national affairs. It is a great and a very useful one, but the art of regulating it properly, as is the case with every new and great contrivance, has been till lately imperfectly understood. The rule of making contemporary provision for the extinguishment of principal as well as for the payment of interest in the act of contracting new debt, is the desideratum—the true panacea.

But this, like most others, is not an absolute but a relative question. If it were even admitted that the system of anticipation by credit is, in the abstract, a bad one, it will not follow that it can be renounced by any one nation while nations in general continue to use it. It is so immense a power in the affairs of war, that a nation without credit would be in great danger of falling a victim in the first war with a power possessing a vigorous and flourishing credit.

What astonishing efforts has credit enabled Great Britain to make? What astonishing efforts does it enable her at this very moment to continue? What true Englishman, whatever may be his opinion of the merits and wisdom of the contest in which his country is engaged, does not rejoice that she is able to employ so powerful an instrument of warfare? However he may wish for peace, he will reflect that

there must be two parties to the pacification, and that it is possible the enemy may either be unwilling to make peace, or only willing to make it on terms too disadvantageous and humiliating.

He must, therefore, cherish the national credit, as an engine by which war, if inevitable can be maintained, and by which, from that very possibility, a better peace can be secured.

It is remarkable too that Great Britain, the only power which has uniformly cultivated an enlightened and exact plan of national credit at a juncture so critical as the present, continues to uphold the various branches of her commerce and industry in great energy and prosperity, and will in the end tax her adversary, in exchange for the products of her industry, with a large proportion of the expenses of the actual war.

The commerce and manufactures of France are so prostrated that this consequence cannot but follow. For some years to come, after peace, she must be customer to Great Britain for vast supplies.

But let us still return to and keep in view this very material point already stated. 'T is *credit* in general, not funding systems in particular, against which the objections made, as far as they have foundation, lie. However obtained, it leads to exactly the same consequences, which are charged on funding systems, which are no otherwise answerable for those consequences than as they are means of credit.

Any provision, therefore, for our revolution debt, which from its justice and efficiency would have given

satisfaction and inspired confidence, would equally have conferred national credit, and would have been equally liable to the evils of an abuse of credit.

The dilemma was either to make and continue a just and adequate provision for the debt, till it was discharged, and thereby establish credit, and incur the chances of the evils incident to its abuse; or not to make a just and adequate provision for the debt, and so commit national injustice, incur national dishonor and disgrace, and, it may be added, shake and weaken the foundation of property and social security.

Thus we may discard from the examination of the subject, the general question whether the system of credit (and as a means of credit, the funding of debts) is a salutary or a pernicious system. It could only with propriety arise with regard to the policy of the government in future cases—that is, how it would or would not in future emergencies resort to anticipation by credit, or find immediate resources in contemporary contributions of the community and in the spoils of war. It could never be properly raised as to a debt previously contracted. The objections to a system of credit could never, with an honest man, justify a moment's hesitation about the obligation and propriety of a just and efficacious provision for a debt previously incurred, either from a real necessity or from a past neglect of the government to attend duly to the impolicy of employing credit and of contracting debt.

A government which does not rest on the basis of justice rests on that of force. There is no middle

ground. Establish that a government may decline a provision for its debts, though able to make it, and you overthrow all public morality, you unhinge all the principles that must preserve the limits of free constitutions, you have anarchy, despotism, or what you please, but you have no *just* or *regular* government.

In all questions about the advantages or disadvantages of national credit, or in similar questions which it has been seen may be raised (and it may be added have been raised) with respect to all the sources of social happiness and national prosperity, the difference between the true politician and the political empyric is this: the latter will either attempt to travel out of human nature and introduce institutions and projects for which man is not fitted and which perish in the imbecility of their own conception and structure, or without proposing or attempting any substitute they content themselves with exposing and declaiming against the ill sides of things, and with puzzling and embarrassing every practicable scheme of administration which is adopted. The last indeed is the most usual because the easiest course, and it embraces in its practice all those hunters after popularity who, knowing better, make a traffic of the weak sides of the human understanding and passions.

The true politician, on the contrary, takes human nature (and human society its aggregate) as he finds it, a compound of good and ill qualities, of good and ill tendencies, endued with powers and actuated by passions and propensities which blend enjoyment

with suffering and make the causes of welfare the causes of misfortune.

With this view of human nature he will not attempt to warp or disturb its natural direction, he will not attempt to promote its happiness by means to which it is not suited, he will not reject the employment of the means which constitute its bliss because they necessarily involve alloy and danger, but he will seek to promote its action according to the bias of his nature, to lead him to the development of his energies according to the scope of his passions, and erecting the social organization on this basis he will favor all those institutions and plans which tend to make men happy according to their natural bent, which multiply the sources of individual enjoyment and increase national resources and strength, taking care to infuse in each case all the ingredients which can be devised as preventives or correctives of the evil which is the eternal concomitant of temporal blessing.

Thus, observing the immense importance of credit to the strength and security of nations, he will endeavor to obtain it for his own country in its highest perfection, by the most efficient means; yet not overlooking the abuses to which, like all other good things, it is liable, he will seek to guard against them by prompting a spirit of true national economy, by pursuing steadily, especially in a country which has no need of external acquisition, the maxims of justice, moderation, and peace, and by endeavoring to establish, as far as human inconstancy allows, certain fixed principles in the administration of the finances

calculated to secure efficaciously the extinguishment of debt as fast at least as the public exigencies of the nation are likely to occasion the contracting of it. These, I can truly say, are the principles which have regulated every part of my conduct in my late office.

And as a first step to this great result, I proposed the *funding* of the public debt.

This quality of funding appeared to me essential in the plan of providing, for different reasons.

1. First it appeared to me advisable that the nature of the provision should be such as to give satisfaction and confidence by inspiring an opinion of security to the creditors. This was important not only as it regarded their advantage, but as it regarded the public interest, the national credit was intimately connected with that satisfaction and confidence. They tended besides to produce another important effect which will be noticed hereafter.

2. It was desirable to guard the government and the creditors against the danger of inconstancy in the public councils. The debt being once funded, it would require the concurrence of both branches of the legislature and of the President, or of two thirds of both branches overruling the opposition of the President, to shake the provision. Of this there was a moral impossibility—at least the highest degree of improbability. To make a provision annually would require the like concurrence in its favor; of course, would be continually liable to be defeated by improper views on either of the branches or departments. Whoever has attended to the course of our public councils, and to the dispositions which have

been manifested by a powerful party in them, must be sensible that danger in this case was not ideal. There was good ground to apprehend that the accidental result of a single election and the accidental prevalency of ill-humors in parts of the community might violate the justice and prostrate the credit of the nation.

It is the part of wisdom in a government, as well as in an individual, to guard against its own infirmities; and, having taken beforehand a comprehensive view of its duty and interest, to tie itself down by every constitutional precaution to the steady pursuit of them.

3. It appeared important to give all practicable solidity and stability to the funds or stock which constituted the debt. The funding of the debt was essential to this end. This is but an inference from the preceding remarks. It was to result from obviating the danger of fluctuating councils concerning the debt from the satisfaction and confidence of the creditors arising from an opinion of security, from the constant estimation in which that opinion of security would cause it to be holden, not only by the creditors, but by all other classes of the community, and by foreigners.

One effect of this was to accelerate the period which would terminate an irregular and excessive spirit of speculation in the funds. It is evident that this must have been in proportion to the causes calculated to produce fluctuation in the public opinion with regard to the value of the funds. Insecurity, the chance of the provision being interrupted or de-

teriorated, occurring at every new period of making it, was a more fruitful source than any other of that fluctuation of opinion. The degree of this being always incalculable would have given the utmost scope to imagination, to the acts and intrigues of stock-jobbers, and must have kept the funds constantly an object of the most gambling speculation.

The moment opinion, regulated by experience, had liquidated the value of the funds, speculation would be confined within the limits necessary to give them due activity and value. The immutability of the provision by furnishing better data of calculation, as well as giving security, would hasten that moment, and once arrived it would continue.

The funds in this State would become as they ought to be an object of ordinary and temperate speculation like any other article, whether of commerce, manufactures, or agriculture. While on the opposite plan they would be as long as they existed a mere game of chance and a subject of the most gambling speculation.

It may be remarked that it is now a considerable time since the public stock has reached the desirable point and put an end to the excessive spirit of speculation. This, for some time past, has been far more active, even to intemperateness in other pursuits, in trading adventures and in lands. And it is curious to observe how little clamor there is against the spirit of speculation in its present direction; though it were not difficult to demonstrate that it is not less extravagant or as pernicious in the shape of land-jobbing than in that of stock-jobbing. But many

of the noisy patriots who were not in condition to be stock-jobbers are land-jobbers, and have a becoming tenderness for this species of extravagance. And virtuous, sensible men, lamenting the partialities of all over-driven speculation, know at the same time that they are inseparable from the spirit and freedom of commerce and that the cure must result from the disease.

Another important effect of funding the debt was the quick appreciation of the funds from the same opinion of security. This was calculated to save immense sums to the country. Foreigners else would have become the proprietors of the stock at great undervalues, to the loss of millions to the holders and to the country. The loss to the holders is perceived at once, but the loss to the country, though an obvious consequence, has not been equally palpable to all.

But a little reflection and combination must make it evident to the meanest capacity. If the sale of any article is made at an undervalue by one citizen to another of the same country, what one loses the other gains, and containing within its own bosom the gainer as well as the loser is neither the richer nor the poorer by the operation. It possesses exactly the same property which it had before the bargain between its two citizens. But when the citizen of one country sells to the citizen of another country residing abroad any article at an undervalue, a more valuable thing goes out of the country in exchange for a less valuable thing which is brought into it, and the state whose citizen is the seller loses in exact

proportion to the difference of value of the things exchanged, whether commodity for commodity, or commodity for money—that is, the state loses exactly what its citizen loses by the disadvantageous sale.

It has been imagined, however, that if our debt had not been funded, its precariousness would have been a security against transfers to foreigners. But waiving the observation that this precariousness, which it is supposed would deter foreigners, would imply a depreciation and discredit of the funds, and consequently a bad state of national credit, it may be replied that the effect expected from it would not have been realized.

Foreigners who possessed redundant capitals would still have devoted a part of them to play in this precarious stock, to buy and to sell again. And, though permanent transfers of the stock might not have taken place in the same degree, yet it is probable more property of the country in another shape might have been extracted by the force of this gambling capital acting upon the occasional necessities and sporting with the occasional confidences of our citizens.

Another expedient has been mentioned for preventing alienations, and consequently loss by alienations to foreigners. This was to forbid the alienations to foreigners; in other words, to render them incapable of holding the debt.

But this expedient was inadmissible, and would have been ineffectual.

1. The original debt was alienable without restriction, and foreigners had actually become the

bona-fide proprietors of a considerable sum of it which they had an indisputable title to a provision for, and it was not easy in many cases to distinguish between past and future acquisition, without danger of interfering with rights already acquired.

2. The original debt being in its constitution alienable without restriction, which was an ingredient of value to the holder, it could not have been taken away without breach of contract, unless with his consent upon an equivalent, and this would have increased the embarrassment of such a modification of the debt with consent of the creditors as would consist with the contract and with the immediate requisite accommodation of the government.

3. It was ineligible, as calculated to diminish the value of the stock. All restraints upon alienation, by fettering the free use and circulation of an article of property, naturally lessen its value. As far as foreign capital could have been excluded from the stock market, the effect would have been sensible upon it. It is evident that the value of an article must depend materially on the quantity of capital employed in its negotiations, and it is known that foreign capital has formed and must have formed a considerable portion of that which was employed in the funds.

But, in fact, this exclusion would not have taken place. Foreigners under the cover of citizens would have continued to speculate in the funds, but they would have given considerably less for them on account of the additional risk from the necessity of that cover. And it might have happened that fewer

of those solid and discreet capitalists, who meant to hold, would have engaged in the business, and more of those who meant a temporary profit proportioned to the risk, and, in the end, the probability was the price of stock would have been much lower and less steady, and the foreigners would have had as much of the property either in the shape of stock in trust or in equivalents resulting from the traffic in it as if there was not restriction, and for a less compensation to the country. This has been exemplified in the case of our waste-lands in those States which do not permit foreigners to hold. The only effect, then, of the restriction would have been to depreciate the stock of the country, the thermometer of its credit, without any counterbalancing good.

Indeed, if the exclusion of foreigners could have been effected, *cui bono?* What harm is there that foreigners should speculate in our funds, if they give full value for them? Will not the money they give for the stock, employed in extending our commerce, agriculture, manufactures, roads, canals, and other ameliorations, more than indemnify the country for the interest which they will receive upon the stock, till the principal is reimbursed? In a country with so much improvable matter in a crude state as ours it cannot be doubted that capital employed in those ways will incomparably more than repay the interest of the money employed.

But to overthrow this important consideration, it is alleged that the money acquired by the sales of stock to foreigners would not be employed on the objects which have been mentioned, but would be

dissipated in the enjoyments of luxury and extravagance and sent abroad again to pay for these objects, to the loss *pro tanto* of the country?

This suggestion was not founded in probability, nor has been warranted by the fact. It was true that a large increase of active capital and augmentation of private fortunes would beget some augmentation of expense among individuals, and that a portion of this expense would be laid out on foreign articles of luxury. But the proportion which this employment of the new capital would bear to the part of it which would be employed on useful and profitable objects, would be and has been inconsiderable. Whoever will impartially look around will see that the great body of the new capital created by the stock has been employed in extending commerce, agriculture, manufactures, and other improvements. Our own *real* navigation has been much increased, our external commerce is carried on much more upon our own capitals than it was; our marine insurances in a much greater proportion are made by ourselves; our manufactures are increased in number and carried on upon a larger scale. Settlements of our waste-land are progressing with more vigor than at any former period. Our cities and towns are increasing rapidly by the addition of new and better houses. Canals are opening, bridges are building with more spirit and effect than was ever known at a former period. The value of lands has risen everywhere.

These circumstances (though other causes may have co-operated) it cannot be doubted by a

well-formed or candid man are imputable in a great degree to the increase of capital in public debt, and they prove that the predictions of the dissipation in luxurious extravagances have not been verified. If a part has gone in that way, this loss has not been considerable enough to impair the force of the argument. The universal vivification of the energies of industry has laid the foundation of benefits far greater than the interests to be paid to foreigners can counterbalance as a disadvantage.

Indeed, it is a question whether there has not been an incidental advantage equivalent to the incidental disadvantage of an increased expense in foreign articles. It is the restoration of stock alienated to the country by the emigration to it of foreign settlers with capitals. It may be said that this advantage is foreign to the operation of the plan—it arises from other causes out of the state of Europe. But it is to be remembered that collateral facilities, when dispositions to a certain event exist, contribute to give them an effect which they would not have without those facilities. The convenient mode of transferring property to this country, through the medium of our stock in the markets of Europe, has materially promoted the emigration of persons possessed of capital. And if our government continues to operate in a manner which will maintain the confidence of foreigners, it is a question whether the possession of large sums in our funds will not bring over most of the proprietors, so as to reinvest the country with the alienated stock, and thus procure it a double compensation on foreign alienations.

A third important effect of giving solidity and stability to the stock by funding the debt, was the rendering it useful as capital. Those who may deny that it has even this tendency in defiance of the most manifest facts, cannot dispute that it must have it, if at all, in proportion to the security of the footing upon which it stands.

The opinion of its being a safe and substantial property is essential to that ready marketable quality which will render it expedient to invest unemployed monies in it till the opportunity of employment occurs, and certain that it can be brought into action when the opporuntity arrives.

To be certain of its operation as active capital it is only necessary to consider that it is *property which can almost at any moment be turned into money.* All property is capital; that which can quickly and at all times be converted into money is active capital. It is nearly the same thing as if the possessor had an equal sum of money in hand. The profound and ingenious Hume thus describes its effects.

* * * * * *

Who doubts that a man who has in his desk 10,000 dollars in good bank notes, has that sum of active capital? Who doubts any more, though there be two steps in the process, that a man who has in his hand 10,000 dollars of the notes of merchants of unquestionable solidity and credit, which he can at any moment discount at the banks, has an equal sum, bating the price of discount, of active capital? Who can doubt any more that the possessor of 10,000 dollars of funded stock which he can readily carry

into the market and sell for 10,000 dollars of these merchants' or bank notes, or gold and silver, is equally possessor of so much active capital?

In this country, where the sum of gold and silver, the great organ of alienation and circulation, is comparatively more limited than in Europe, the certainty of an immediate conversion of stock into money is not as great as in some of the great stock markets of Europe; but the difference is not so material as to prevent the effect being substantially the same.

When the stock is unfunded and precarious, its salableness is proportionably fluctuating and uncertain. So much so, that it does not possess the quality of active capital, but inverts the effect by becoming a mere subject of gambling speculation. This was noticed in my first report on the finances in these words. * * *

Some theoretical writers on political economy have contested the effect of public funds as capital.

Their objections, and an answer to them are to be found in my report on manufactures. * * *

It may be useful to add some further illustrations. Trace the progress of a public debt in a particular case.

The government borrows of an individual one hundred dollars in specie, for which it gives its funded bonds. These hundred dollars are expended on some branch of the public service. It is evident they are not annihilated; they only pass from the individual who lent, to the individual or individuals to whom the government has disbursed them. They

continue, in the hands of their new masters, to perform their usual functions, as capital. But besides this, the lender has the bonds of the government for the sum lent. These from their negotiable and easily vendible nature, can at any moment be applied by him to any useful or profitable undertaking which occurs; and thus the credit of the government produces a new and additional capital, equal to one hundred dollars, which, with the equivalent for the interest on that sum, temporarily diverted from other employments while passing into and out of the public coffers, continues its instrumentality as a capital, while it remains not re-imbursed.

When, indeed, the money borrowed by the government is sent abroad to be expended, the effect above described does not happen, unless the expenditure is for a purpose which brings a return. But this is a partial exception to the general rule.

It has been said that from the sum of the debt acting as capital is to be deducted the quantity of money actually employed in the negotiation of the funds. To conceive well of the immense disparity between the capital negotiated and the organ of negotiation, money, it may be useful to advert to the small quantity of specie in certain nations of immense capital in fixed and negotiable property. The specie of Great Britain, for example, is computed as from 15,000,000 to 20,000,000 stg. How small a sum to be the organ of all the alienations of landed property, ships, merchandise, manufactures, public funds, and of insurances and other pecuniary negotiations! The capital value of its land is estimated

at * * * The public funds amount to near * * * The objects of foreign and domestic commerce, including manufactures and other casual objects, cannot be estimated at less than * * * Yet the small sum of from 15,000,000 to 20,000,000 of specie is directly and indirectly the instrument of all the alienation of this prodigious mass. This gives us an idea of the vast activity of the power.

A simple, concise, and yet comprehensive view of the effect of the funds as capital is comprised in this exhibition of it. To the mass of active capital resulting from the property and credit of all the individuals of the nation, is added another mass constituted as the *joint* credit of the whole nation, and existing in the shape of the government stock, which continues till that stock is extinguished by redemption or reimbursement. Is it not evident that this throwing into the common stock of individual operations the credit of the nation, must increase and invigorate the powers of industrious enterprise?

See what a wonderful spectacle Great Britain exhibits. Observe the mature state of her agricultural improvements under the auspices of large capitals employed to that end. Consider the extent of her navigation and external commerce. Note the huge and varied pile of her manufactures. See her factors and agents spread over the four quarters of the globe, doing a great part of the business of other nations by force of capital. View the great extent of her marine insurances attracting to her a considerable portion of the profits of the commerce of most other nations. View her, in fine, the creditor of the world.

Consider withal what her population is, that all the gold and silver she contains probably falls short of 20,000,000 stg., then ask whether there be not a strong presumption that her public funds are a principal pillar of this astonishing edifice, as her own men of business generally believe. But another and a powerful motive to the funding of the debt was that it would serve as one of the equivalents to be offered to induce the public creditors to consent voluntarily to those modifications of their claims which the public accommodation required.

The public debt of this country, as I stated in my first report upon the finances, was fifty-four millions.

There was no obligation to do more than make provision annually for the debt. The *funding* of it was no part of the original contract.

This, therefore, superadded a material advantage for the creditors to their primitive rights. The additional security was a reasonable ingredient or commutation to be proposed for something to be relinquished.

Among individuals, money lent for a length of time on personal security frequently carries a higher interest than if lent on real security. The change from one to the other would be a fair ground for a stipulation to lower the interest as the consideration. A government need not fear imputations on its honor or loss of credit by regulating itself in its money concerns according to the rules which prevail among fair individuals.

The third feature of my plan was to provide, in the first instance, for the foreign part of the general

debt in exact conformity with the contracts concerning it.

The propriety of this has been uncontested and speaks for itself. It would have been highly inexpedient and would have exposed our credit abroad to have perplexed our creditors with any new propositions concerning their debts. Even the measure of endeavoring to transfer the foreign debt to a domestic foundation, which has been subsequently proposed, upon equivalents to be given, would have been premature till confidence had been inspired by an experience of the efficacy of the provision.

The fourth feature was "to take, as the basis of the provision for the domestic part of the general debt, the contracts with the creditors as they stood at the time of the adoption of the new Constitution, according to the then unrevoked acts and resolutions of the former government, except as to such alterations as they might, on legal principles, be pronounced to have undergone by voluntary acts and acquiescences of the creditors themselves; bottoming the provision on this principle, that those contracts were to be fulfilled as far and as fast as was practicable, and were not to be departed from without the free consent of the creditors."

To a man who thinks justly and feels rightly for the reputation of the country of which he is a citizen, it is a humiliating reflection that it should be at all necessary to insist on the propriety of regulating the provision for the debt by the contracts concerning it.

The obligation to fulfil contracts is so fundamental a principle of private morality and social justice—so

essential a basis of national credit, that nothing less than the fact itself could induce a belief that the application of the rule to our public debt could have been controverted by leaders of parties or by any considerable portion of the community. Yet, in truth, it has been controverted, either avowedly or virtually, by a great proportion of all parties, by declarations or propositions disclaiming the application of the principle, or by the rejection of propositions necessary to give it effect.

The general proposition, indeed, which affirms the obligation of fulfilling contracts, on governments as well as individuals, was of a nature which the most profligate politician was not shameless enough to deny.

But it has been contended that the case of our public debt was an extraordinary and peculiar case, justifying, on great principles of national justice and policy, a departure from common rules. The quantity of alloy in its original concoction, the extensive alienations at undervalues, the extreme point of depreciation for a certain period, the confused state of the debt by antecedent violations of contract and by the concession of partial advantages to particular descriptions of it, the impossibility of reinstating the primitive contracts which had been formerly violated, and the inequality of a full provision according to the new,—all these were urged or espoused as reasons for arbitrary provisions for the debt according to certain abstract notions of equity and right. It has been intimated that these heretics were divided into two principal classes: one which advocated a

provision for the debt on the ground of a discrimination between original holders and alienees; another which advocated an equal provision for all at some arbitrary rate of interest inferior to the stipulated rates.

The first was apparently at least subdivided into three lesser sects: one which contended for providing in favor of original holders according to the terms of the contract, and in cases of alienation by a kind of composition or compromise between the original holders and alienees, which, in the course of the debate in Congress, took the specific form of giving ten shillings in the pound to one and the same to the other; another which contended for a full premium for original holders who had not alienated, and for an inferior one to alienees, without regarding the original holders who had alienated; a third for a reliquidation of the debt, making a full provision according to that reliquidation for original holders and an inferior one for alienees, with or without regard to the creditors who alienated.

The second general sect had also a diversity of opinions, some willing to allow a higher, some a lower rate of interest; some willing to fix the standard absolutely, without compensations for the reduction; others willing to give some kind of equivalents, but to make the provision absolute and final, leaving no option to the creditors.

The latter, when the subject was under debate, made no direct propositions; but then and since, they discovered their intentions in their conversations, in endeavoring to pare down the provision

proposed in my report, and in resisting in subsequent cases a compliance with the contracts as to those creditors who have not accepted the terms held out to them.

The former made a formal and passionate effort to substitute their scheme for that which was contained in the plan reported from the Treasury. It failed, but it has laid the foundation of the great schism which has since prevailed.

There never was a doubt that if the idea of discrimination had obtained it would have resulted in a fraud on alienees without benefit to their alienors. A large proportion of those who supported the principle of discrimination clearly manifested that they meant to leave the difference in the public pocket.

The substance of the argument for a discrimination was this: [The rest is wanting.]

DEFENCE OF THE FUNDING SYSTEM

II

THE ASSUMPTION OF THE STATE DEBTS

The operation of these circumstances generated a variety of different sects holding different opinions. The parties in and out of Congress on the subject of a provision for the public debt [1] may be thrown into

[1] In speaking of the public debt hereafter, to avoid circumlocution I shall denominate the original debt of the United States the general debt, and the separate debts of the respective States the particular debts. As often as these terms occur they are to be understood in this sense.

five classes: I. Those who were for providing for the general debt, exclusively of the particular debts, on the basis of the subsisting contracts. II. Those who were for providing separately for the general debt on the principle of a discrimination between original holders and alienees. III. Those who were for providing separately for the general debt without that discrimination at arbitrary rates of interest inferior to the stipulated rates. IV. Those who were for providing for the general debt on the basis of the subsisting contracts, and for assuming the particular debts upon an equal provision. V. Those who were for providing for the general debt at arbitrary rates of interest inferior to the stipulated rates, and for assuming the State debts upon an equal provision.

The classes which embraced the greatest number of real partisans were the second and fifth. The second was subdivided, apparently at least, into those who advocated the taking the rate of interest stipulated in the contract as the standard of provision, giving to the original holders what was withheld from the alienees and those who were for saving to the public what was withheld from the alienees. The last, though not in appearance, was in fact the most numerous. Indeed it may justly be doubted whether any of those who professed to advocate compensation to the original holders were ever sincere in the proposition. But neither of the classes in either house of Congress was itself a majority for the general debt.

Those who favored a provision at lower than the stipulated rates of interest were influenced respect-

ively by different motives: some by a doubt of the ability of the government to make a full provision, especially with the assumption of the particular debts; others by an opinion that from the constitution of the debt and what they called the alloy in it a rate of interest lower than that stipulated was most consistent with justice to the public; others from a spirit of mean and fraudulent parsimony which aimed at savings to the public *per fas et nefas*. These last were not distinguishable in their principle of action from those who advocated one species of discrimination. Collateral circumstances respecting the course of alienations locally and otherwise gave a different direction to their conduct.

It is easy to perceive that such a heterogeneous mass of opinions, not merely speculative, but actuated by different interests and passions, could not fail to produce much embarrassment to the person who was to devise the plan of a provision for the public debt, if he had been provident enough to sound the ground and probe the state of opinions.

It was proper for him to endeavor to unite two ingredients in his plan: intrinsic goodness and a reasonable probability of success.

It may be thought that the first was his only concern, that he ought to have devised such a plan as appeared to him absolutely the best, leaving its adoption or rejection to the chance of events and to the responsibility of those whose province it was to decide.

But would not this have been to refine too much? If a plan had been offered too remote from the pre-

vailing opinions, incapable of conciliating a sufficient number to constitute a majority, what would have been the consequences? The minister would have been defeated on his first experiment.

Before he had established any reputation for a knowledge of the business of his department, he might be sure that the blame of his ill-success would have fallen on his want of skill, not upon the ignorance or perverseness of those who had rejected his plan.

Placed in a background, he would have lost confidence and influence. A retreat, or the disgrace of remaining in office without weight or credit or an adequate prospect of being useful, would have been his alternative. The public interest might have been still more injured. The public deliberations, left without any rallying point, would have been the more apt to be distracted between jarring, incoherent, and indigested projects, and either to conclude nothing or to conclude on something manifestly contrary to the public interests. That this is a natural inference is proved by the diversity and still more by the crudity of the opinions which have been enumerated, and by the zeal with which considerable men afterwards and since have maintained opinions which would disgrace pupils not yet out of the alphabet of political science.

Had a single session passed, after the subject had been once seriously entered upon, without some adequate provision for the debt, the most injurious consequences were to have been expected.

With but a slight dawning of previous confidence,

such a delay arising from the conflict of opinions, after a public display of the very unsound and heretical notions which were entertained by too many, would have excited something very like despair in the creditors, and would have thrown complete discredit on the debt. The value in the market would have sunk to almost nothing, to the great prejudice of those who had lately, through confidence in the new government, purchased at high prices. The fluctuation would have increased the dissatisfaction with the thing itself, and by its influence upon opinion would have multiplied twofold the obstacles to a future provision on proper principles. The contagion of the opposite opinions maintained in the legislature would have spread through the community, fixing, increasing, and embittering the differences of opinion there, which, by reaction, would have strengthened and confirmed the oppositions in the legislature. No mortal could foresee the result. A total failure to provide for the debt was possible. A provision for it on terms destructive of principle, replete with injustice to the creditors, was the least ill result to have been apprehended.

Those who from a horrible sentiment of injustice or the mania of false opinions regard the public debt with detestation as a nuisance and a curse, and every creditor as a culprit; those who would have delighted in the disgrace of a government they had resisted and villified, might have looked forward with malignant pleasure to this wreck of the public debt. But every virtuous enlightened man would foresee, in the complicated mischief of ruined credit,

the prostration abroad and at home of the character of the new government, its possible subversion, and with it a severe blow to the general security of property.

In hinting at the possible subversion of the government, it may be proper to explain the foundation of this idea. The public creditors, who consisted of various descriptions of men, a large proportion of them very meritorious and very influential, had had a considerable agency in promoting the adoption of the new Constitution, for this peculiar reason, among the many weighty reasons which were common to them as citizens and proprietors, that it exhibited the prospect of a government able to do justice to their claims. Their disappointment and disgust, quickened by the sensibility of private interest, could not but have been extreme.

There was another class of men, and a very weighty one, who had had great share in the establishment of the Constitution, who, though not personally interested in the debt, considered the maxims of public credit as of the essence of good government, as intimately connected by the analogy and sympathy of principles with the security of property in general, and as forming an inseparable portion of the great system of political order. These men, from sentiment, would have regarded their labors in supporting the Constitution as in a great measure lost; they would have seen the disappointments of their hopes in the unwillingness of the government to do what they esteemed justice, and to pursue what they called an honorable policy; and they would have

regarded this failure as an augury of the continuance of the fatal system which had for some time prostrated the national honor, interest, and happiness. The disaffection of a part of these classes of men might have carried a considerable reinforcement to the enemies of the government. The lukewarmness of the residue would have left them a clearer stage to direct their assaults against it. The real failure to do right, which often sinks the governments as well as individuals into merited contempt, alienating many of its ablest friends, while it would diminish its support, would, at the same time, increase in a tenfold ratio the mass of unfavorable opinion towards it. And from the combination of these causes it would have been likely to have degenerated into a despicable impotence, and after a lingering atrophy to have perished.

In pursuing too far the idea of absolute perfection in the plan to be proposed, unaccommodated to circumstances, the chance of an absolutely bad issue was infinitely enhanced, and of the evils connected with it.

Was this the course either of patriotism or true personal policy? It has been remarked that in the rejection of the plan which was proposed it was to be apprehended that public opinion would charge the fault upon the plan, not upon the rejecters of it. But it may be said that time and the experience of ill effects would have done justice and placed the blame at the proper door. Let it be so. Would it not have been blamably selfish to have sought to secure reputation at the hazard of so great evils to

the community? Was it not more fit by accommodation to circumstances within due limits to pursue a better chance of public good at the risk of an imputation that complete theoretic perfection had not been adhered to?

Would time have pronounced a favorable sentence upon a different course? Would it not have said that goodness is often not an absolute but a relative term, and that it was culpable refinement to have sacrificed the prospect of accomplishing what was substantially good to the impracticable attainment of what was deemed theoretically perfect?

I grant that the idea of accommodation was not to be carried so far as to sacrifice to it any essential principle. This is never justifiable. But with the restriction of not sacrificing principle, was it not right and advisable so to shape the course as to secure the best prospect of effecting the greatest possible good?

To me this appeared the path of policy and duty, and I acted under the influence of that sentiment.

Thus guided, I resolved to give the following features to my plan:

First. To embrace in the provision, upon equal terms, the particular debts of the individual States as well as the general debt of the United States.

Secondly. To *fund* the whole by *pledging* for the payment of the interest certain specified revenues adequate to the object, to continue pledged until the redemption or reimbursement of the principal of the debt.

Thirdly. To provide, in the first instance, for the

foreign part of the general debt in exact conformity with the contracts concerning it. To endeavor to effect a new, more manageable, and more convenient modification of the domestic part of the general debt, with consent of the creditors, upon the ground of certain equivalents to be offered to them.

Fourthly. To take as the basis of the provision for the domestic part of the general debt the contracts with the creditors as they stood at the time of the adoption of the new Constitution, according to the *unrevoked* acts and *resolutions* of the former government, except as to such alterations as they might on legal principles be pronounced to have undergone by voluntary acts and acquiescences of the creditors themselves; bottoming the provision on this principle, that those contracts were to be fulfilled as far and as fast as was practicable, and were not to be departed from without the free consent of the creditors.

Fifthly. To provide for the arrears of interest which had accumulated, upon the same terms with the principal, constituting them a new capital.

Sixthly. To endeavor to carry these ideas into effect by opening two loans on the terms proposed, one for the domestic part of the general debt, the sums subscribed thereto to be paid in the principal and arrears of interest of the old debt; another for the particular debts of the respective States, the sums subscribed thereto to be paid in the principal and arrears of interest of those debts.

Seventhly. To endeavor to establish it as a rule of administration, that the creation of debt should

always be accompanied with a provision for its extinguishment; and to apply the rule as far as it could be applicable to a new *provision* for an *old* debt by incorporating with it a fund for sinking the debt.

Eighthly. As an incident to the whole, to provide for the final settlement of accounts between the United and individual States, charging the latter with the sums assumed for them by the subscriptions on State debts, which should be made to the proposed loan.

Let us now review, and under each head, the reasonings which led to this plan and the means and modes of execution:

1. As to the uniting in the provision upon equal terms the particular debts of the several States with the general debt of the United States.

It appeared to me that this measure would be conducive to the greatest degree of justice, and was essential to policy.

I use a qualified and comparative mode of expression in the first case, because from the past course and then existing state of things perfect justice was unattainable. The object consequently was to pursue such a plan as would procure the greatest practicable quantum of justice.

The true rule for conducting the expenses of the Revolution, which established independence, seems to have been this: That, as the benefits to be derived from it would be individually equal to the citizens of every State, so the burthens ought also to be individually equal among the citizens of all the

States according to individual property and ability. That for this purpose all the expenses of the war ought to have been defrayed out of a common treasury, supplied by contributions of all the individuals of the United States, levied under the common authority, according to equal rules, by loans either direct by borrowing or indirect and implied by emissions of paper money, operated upon the *joint credit* of the Union, and by bringing into common stock all auxiliary or adventitious resources, as waste land, confiscated property, etc.

This was the true justice of the case and the true national ground—a ground which perhaps might well have been taken by those full assemblies of the Union, convened by the direct commission of the people, with plenary power to take care of the nation, but which was never but partially taken, and was successfully abandoned in compliance with the unnational demands of State claims—the aristocracy of State pretensions.

But instead of this course, that which was pursued was a compound of incoherent principles. A part of the general expenditure was defrayed on the general credit of the United States immediately by the emission of bills of credit and by loans of individuals, mediately by the contracts of various officers and agents who obtained services and supplies on the credit of the Union and gave certain paper evidences of them. Another part was defrayed in consequence of requisitions upon the States of men, money, provisions, and other articles of supply, according to certain estimated or conjectural quotas to be raised

and furnished by the States separately. A third part was defrayed by the spontaneous exertions of the States themselves for local defence, for enterprises independently undertaken to annoy [1] the common enemy, divest him of acquisitions,[2] or make acquisitions [3] upon him. Each State enjoyed the exclusive benefit of its extra resources, waste lands, and confiscated property. Geographical lines thus made a substantial difference in the condition of the citizens of one common country, engaged in a common cause.

It was impossible that such a state of things should not have led to very disproportionate exertions and contributions—should not have produced and left very unequal burthens on the citizens of different States. According to the temporary energy of the councils of each, according to their comparative degree of zeal in the common cause, according to the pressure of circumstances, the remoteness or proximity of danger, according to the peculiar character of the citizens of each State, according to a variety of contingent impulses—were the exertions of the several States, and of course their contributions to the expenses of the general defence.

Very different also was the care and accuracy of the different States in recording and preserving the evidences of their contributions. Some States kept an account of every thing; others only of those things which they had furnished upon regular authorizations of the Union; others kept very loose

[1] Frigates and Carolinas.
[2] Penobscot expedition.
[3] Indian expeditions.

and imperfect accounts of any thing; and others lost by accidents of the war the records and vouchers which they had taken.

Add to all this the circumstance of the valuable aids which some States were able to derive more than others from auxiliary resources, particularly of waste land and confiscated property, and two obvious consequences will result:

First. That it was impossible that in the course of the war there could have been any proportional equality between the exertions, contributions, and burthens of the citizens of the different States.

Secondly. That it was impossible by any after adjustment to restore the equilibrium and produce retrospective equality.

All then that could be rationally aimed at was to pursue such a course as promised MOST CERTAINLY the *greatest degree* of justice.

The option lay between three modes of proceeding:

First. To refer the obtaining of ultimate justice to a final settlement of accounts between the United and individual States upon the best and most equitable principles which were practicable, and to provide for the balances which would be established in favor of certain States by that settlement.

Second. To exonerate all the States from debt by the assumption of their still-existing debts, and to abandon a settlement as impracticable on certain and equitable principles.

Third. To exonerate the States from debt by the assumption of their still-existing debts; to charge

each with the sums assumed upon its account, and to attempt an ultimate equalization by the settlement of accounts.

The first and second plans were those contrasted by official propositions and deliberations, and will be considered together by way of comparison with each other: first, with regard to justice; and secondly, with regard to policy.

The first plan, which was that vehemently insisted upon by those who opposed the assumption of the State debts, appeared to me liable to some conclusive objections on the score of justice.

I. It would have left certain States greatly indebted, deprived of the most easy and productive sources of revenue by the occupation of them in a provision for the general debt, to struggle for an indefinite and uncertain period with a heavier load than they were able to bear, depending for relief on the precarious issues of a final settlement of accounts and a provision for the balances.

II. It was uncertain in the nature of the thing, and so considered by all parties, not only when a settlement could be effected, but whether any settlement would ever be practicable. The peace took place in 1783. In 1790 very little more than the formal measures of settlement had been devised, and scarcely any impression made on the business.

III. It was altogether a chapter of accidents whether a settlement would bring the expected and the just relief. From the circumstances which have been mentioned, a settlement must have been of necessity an artificial and arbitrary thing. It was

impossible for any to be made on truly equitable or satisfactory principles.

The greatest portion of human intellect and justice was unequal to it, because adequate data were wanting. Some States would have credits, when others, from the manner of keeping their accounts, would be without the corresponding credits for similar objects.[1] Some States, from the system of management, would have much larger credits for a given quantum of service and supply than others.[2] Some States, from the imperfect mode of keeping their accounts, and from the loss of vouchers, would either have too much or too little credit. Either stricter rules of evidence must be pursued, which would exclude too much, or looser rules must be admitted, which would admit too much. These suggest sufficient and yet only a part of the causes which rendered a just settlement impracticable.

In such a posture of things consequently, it might well have happened that an indebted State, well entitled to relief by a balance in its favor, might have been disappointed by the issue of the settlement.

Not to assume the State debts therefore was to have the greatly indebted States totter under a burthen to which they were unequal, in the indefinite expectation of a settlement, and to involve a possibility that they might never obtain relief, either from the total failure of a settlement on account of the

[1] Thus bounties for engaging men were in particular States regularly brought into account and vouched; in others, furnished at the expense of classes, no accounts were ever kept.

[2] Thus purchasers at exorbitant prices procured in some stations what coercion at regulated moderate prices procured in others.

difficulties attending it, or from not receiving their just dues by the embarrassment that unavoidably rendered a settlement artificial and arbitrary.

The reference, therefore, to a settlement as the sole rule of justice, without an assumption of the State debts, was not likely to afford either such prompt or such *certain* justice as might be looked for from the immediate assumption of the State debts.

The objection to this reasoning was that it takes it for granted that the greatly indebted States were not so through want of good management or exertion, and were entitled to eventual relief; but the contrary of this presumption might have been the fact.

There were good grounds for the conclusion that the States most indebted were so from meritorious causes, from their exertion in the common cause, and not from extravagance in the first instance, or want of effort to extricate themselves in the second.

The States most involved in debt, in proportion to their resources, were South Carolina and Georgia to the south, Massachusetts, Connecticut, and Rhode Island to the north.

South Carolina and Georgia, it is well known, next to New York, had been the principal theatres of the war. Though the metropolis of New York was during almost the whole of the war in the hands of the enemy, and there were very few parts of it which at some period were not exposed to his ravages, yet it never was so completely overrun or so entirely a victim as were the States of South Carolina and Georgia. It is known that they were temporarily conquered.

Besides, as the principal military operations in the southern quarter were late in the war, when the declension of the paper money disabled Congress from affording equal succor, and their remoteness from the States of the greatest pecuniary resources prevented them from deriving equal aid from their neighbors, they were of course left to sustain on their own shoulders a greater part of the weight of the war than had been borne by other States while the seats of it.

Besides exhausting all the means of credit, they were subjected a great part of the time to the military coercion of our own army as well as the depredations of the enemy. What in other cases had been an extraordinary and momentary expedient was there an ordinary resource—the principal means for a considerable time of carrying on the war. They were literally devoured by the war. The whole movable property of the States was taken by the enemy or thrown into the public lap. Besides this, the State governments, from the same circumstance of remoteness, were more ostensible in that quarter. More of the effort was on their immediate account. The consequence was that a less proportion of the supplies drawn from the country were taken to the immediate account of the United States by their officers and agents and upon their acknowledgments or certificates; consequently a greater proportion of the expense assumed the shape of State debt.

The consequence was that the particular debts of South Carolina and Georgia, especially the former, were, comparatively speaking, swelled to an enormous amount.

To face them they had but slender resources. The degree to which they had been exhausted and ravaged by the war left them in a situation to require bounties rather than to struggle with heavy debts. The inability of South Carolina and Georgia to provide for their debts was increased by the considerable debts which their individuals owed to foreigners. The population of either of them was not great. Georgia may be considered as in its infancy. She claims a large tract of waste land, but besides the counter claim of the United States it had not been in her power, from the situation of her frontier with regard to the Indians, to turn them to great account. She had indeed paralyzed a great proportion of her debt by means far from justifiable, but she was unable to provide even for the residue.

South Carolina [1] had no auxiliary resource except what she had derived from confiscated property, which a spirit of liberality that does her honor on the return of peace prevented her turning to much account, and which at best was a very inadequate resource compared with her burthens. It was manifestly impossible for her to face efficaciously the interest upon her debts, much more to make any impression on the principal.

From this sketch and various circumstances of general notoriety, scepticism itself cannot doubt that South Carolina had indisputable claim of relief from the United States. She had contracted her debt

[1] In attempts to provide for the interest, taxation had been carried in South Carolina to a length not short of any State, except Massachusetts and perhaps Connecticut.

most meritoriously, her sufferings had only been equalled by her efforts, she was unable to struggle unassisted with her debt, she was chargeable with no deficiency of effort to face it since the peace, and she was equitably entitled to relief from the United States. But her situation with regard to the regularity of her accounts and the evidence for authenticating her claims, rendered it peculiarly problematical whether she would ever find relief in a general settlement of accounts.

Rhode Island had also contracted her debt meritoriously. A considerable part of her small territory had been for a great part of the war in the possession of the enemy. She kept, for her population, respectable forces in the field throughout the war, and had uniformly manifested a useful and laudable zeal. Her resources were slender. Taxes upon a population of —— were all she could pretend to. She had no waste land, and none or very little confiscated property.

Her debt was considerable; 't is evident that if she was to provide for it, the means must come from the United States. And there was every presumption that she was entitled to this aid. It is true that she had in a great measure encumbered herself by means which will be an indelible stain in her annals. But the individuals who were the victims had not the less claim upon the justice of their country. The assumption has promoted this justice, and has enabled and induced the State to come forward with more equitable arrangements in their favor.

The pretensions of Massachusetts and Connecticut

with regard to their debt were of the most meritorious complexion. As a general position each State may justly claim the praise of a laudable spirit of exertion in the defence of their common liberty, but there were certainly marked differences in the degrees. Abstracting the impulse of being the immediate seat of the war, Massachusetts and Connecticut, especially Massachusetts, stood pre-eminent for steady, constant, and efficient exertions, immedidiately conducing to the great object of the war, not to collateral acquisitions and partial advantages. Massachusetts in particular might justly be denominated the Atlas of the Union, uniformly zealous, uniformly vigorous.

The records of the Treasury and War Departments witness by their results the great exertions of these States in men, money, and other supplies.

The situation in which I myself was placed during the war gave me an opportunity of appreciating the efforts of these different States in the results. The impression on my mind was decisive as to the spirit of what I have asserted. In how many critical periods of the war were the forces of those States the sinews and muscles of the war? Let the records before mentioned declare. Let the memoirs of those who, charged with the chief direction of our military affairs, had the best opportunities of observing, pronounce.

No well-informed man then doubted the fact; subsequent examination, the evidence of official records, confirm the truth.

While the efforts of these States during the war

are incontestably ascertained, they are chargeable with no want of exertion since to exonerate themselves from debt.

Taxation in Connecticut embraced every object, and was carried as far as it could be done without absolutely oppressing individuals. Instead of a few scattered examples of excise, every article of consumption in Connecticut was excised.

In Massachusetts taxation was carried still further, even to a degree too burdensome for the comfortable condition of the citizens. This may have been partly owing to that unskilfulness which was the common attribute of the State administration of finance, but it was still more owing to the real weight of the taxes. The insurrection was in a great degree the offspring of this pressure.

These States had no material auxiliary resources. The moderation of fortunes had left them without much aid from confiscated property. They had claims to waste land, but that of Connecticut has issued in a very unimportant acquisition. That of Massachusetts has fared better, but her acquisition would have done little towards the extinguishment of her debt. Connecticut, without any seaport of consequence, not only could not derive resources from this circumstance, but had been tributary to her more fortunate neighbors.

There was, therefore, *a priori* satisfactory evidence that these overburdened States had a just claim of relief from the United States; and, if we may take the settlement of accounts as evidence, the anticipation has been fully justified by the event.

For not only the sums assumed for them have been covered, but they have had considerable balances reported in their favor.

It will strengthen the argument for the superior justice of the assumption plan, to remark that the debts of the States represented the great mass of State effort during the war.

Not much had been done by taxation. Credit had been the principal engine.

Another objection on the score of justice, which was strenuously urged against the plan of assuming, was that certain States, by vigorous efforts, had considerably reduced these particular debts, while others had made little impression on them. It was, therefore, unequal to assume the debts in the unequal States.

It has been already shown that this difference, as far as it may be founded in fact, was owing to adventitious advantages, and, therefore, in point of substantial justice, the States which had absorbed less of their debt had not the less equitable title to relief. I recur to the example of New York. This State, by large possessions of waste land, by a great deal of confiscated property, by not providing for payment of interest on the debt, whereby its value was kept low to the great injury of the creditors, was able to absorb a considerable proportion of her debt. Connecticut, without these advantages was able to do much less, though her citizens were burdened with a much more considerable effort in contribution. Was it, therefore, inequitable as between these States, that Connecticut should find relief in

an assumption? Surely it was not. Again, if a settlement of account, which was a part of the plan of assumption, was to be relied upon, any inequality created by the assumption would be rectified by the settlement.

Either an equitable settlement of accounts would take place, or it would not. If it did not, the greatly indebted States without an assumption would certainly fail of justice and due relief; if it did, with an assumption, the settlement would remedy any inequality which might have been occasioned by it, and restore equilibrium. An assumption and a settlement on right principles would ensure justice—no assumption and no settlement would ensure injustice. It was to be feared a settlement might not take effect. It was precarious and contingent. An assumption, of course, gave the greatest certainty of justice by an assumption or equalization of the condition of individuals. Pursuing such impressions, this must be deemed of more consequence than any thing which regarded the States in their corporate or collective capacities.

The most simple and satisfactory notion of justice was to secure that individuals of the same nation, who had contended in the same cause for the same object—their common liberty,—should, at the end of the contest, find themselves on an equal footing as to burdens arising from the contest.

Nothing could be more revolting than that the citizens of one State should live at ease free from taxes and the citizens of a neighboring State be overburthened with taxes growing out of a war which

had given equal political advantages to the citizens of both States.

This condition of things previous to the assumption was remarkably exemplified between New York and Massachusetts, between New York and Connecticut. The citizens of New York scarcely paid any taxes, those of Massachusetts and Connecticut were heavily burthened. A like comparison though different in degree might be extended to other States.

The relative condition of States depended on many artificial circumstances. These circumstances might forever have stood in the way of that equality of condition among citizens which was infinitely the most important consideration and the most desirable attainment. The measure which went most directly and certainly to this object was to be preferred. The assumption was such a measure. By taking all the debts upon the Union, to be paid out of the common treasury, defrayed by common contribution according to general rules, the citizens of every State were on an equal footing. State provisions produced inequality from the inequality of their debts, from the inequality of adventitious resources, from the inequality of permanent ABILITIES. Justice among individuals was better promoted in another way.

The New Government had given to the United States the exclusive possession of the branch of revenue which for a considerable time to come in this country is likely to be most productive. Had the government of the United States confined itself to a provision for the general debt, the proprietors of the

particular debts would in several States have been not only in a very unequal, but in a very bad situation. Thus forms would have superseded substance. Men who had contributed their services and property to the support of the common cause at the instance of a State Government, would have fared worse than those who have done the same thing at the instance of the General Government. Did this comport with any rational and true scheme of justice which preferred natural to artificial consideration?

It would have been the more hard, unjust, and unnatural, because a great proportion of the State debts, had been originally contracted immediately with the United States and afterwards transferred to the particular State.

A still greater part was contracted in virtue of the requisitions of Congress upon the States, in which cases it was more reasonable to consider them as agents than as principals.

To resume.—The superiority of the plan of a joint provision over that of a separate provision in the view of justice consists in this:

That supposing a final equitable settlement of accounts between the States, either plan would produce eventual justice.

But the plan of assumption was most likely to expedite justice by the immediate relief which it gave to the overburthened States.

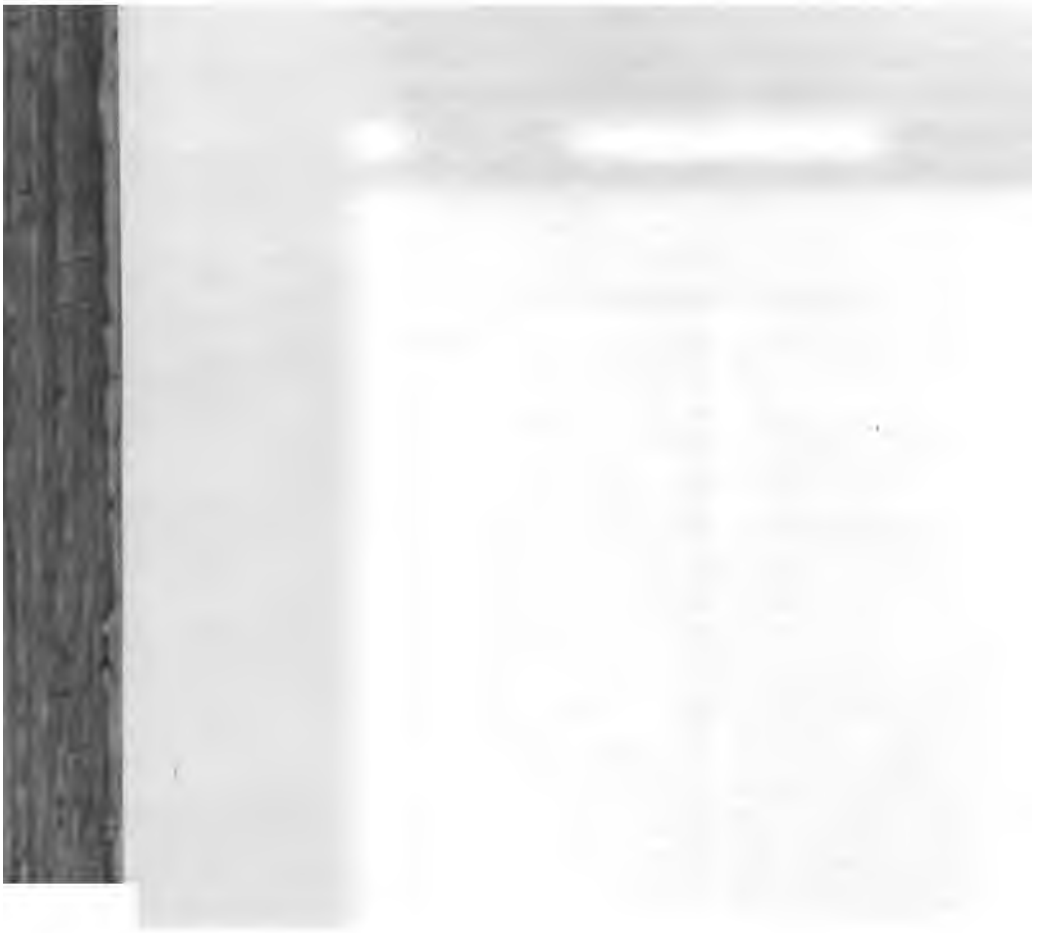
That setting aside the supposition of a final equitable settlement of accounts, the plan of assumption contained the best chance of success, by giving relief to the overburthened States, which would otherwise

have remained without it, though from known circumstances there was a *moral certainty* of their being entitled to it.

That the assumption in every event better consulted justice by conducing to equalize in the first instance the burthen of citizens of the same country arising from a contest in a common cause, and by securing a simultaneous and equal provision for creditors who otherwise would have fared unequally.

These are the principal considerations that relate to justice. In the view of policy the argument is still more conclusive in favor of assumption.

CONTINUED IN VOL. IX.



3 2044 004 494 688

A FINE IS INCURRED IF THIS BOOK IS NOT RETURNED TO THE LIBRARY ON OR BEFORE THE LAST DATE STAMPED BELOW.

CANCELLED
6167316
NOV 6 7 1978
AUG 1 7 1978

4936 30
CANCELLED
AUG 3 1976
OCT 4 75 H

FEB 21 1992
BOOK DUE

WIDENER
FEB 21 1992
BOOK DUE

WIDENER
FEB 1 0 1995
CANCELLED